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ONTARIO LEGISLATIVE
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BILL 1 **Government Bill**

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2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Trustee Act

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THE HON. R. MCMURTRY
Attorney General

TORONTO
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Explanatory Note

The amendment corrects a typographical error in the provision for appointment of a new trustee to fill a vacancy.

BILL 1 **1978**

An Act to amend The Trustee Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 3 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970, is amended by striking out "be" in the eleventh line and inserting in lieu thereof "by". s. 3 (1), amended

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Trustee Amendment Act, 1978*. Short title

BILL 1

An Act to amend
The Trustee Act

1st Reading

February 21st, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(*Government Bill*)

1978

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Government
Publications

BILL 1

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Trustee Act

THE HON. R. MCMURTRY
Attorney General



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BILL 1 **1978**

An Act to amend The Trustee Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 3 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970, is amended by striking out "be" in the eleventh line and inserting in lieu thereof "by". s. 3 (1), amended

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Trustee Amendment Act, 1978*. Short title

BILL 1

An Act to amend
The Trustee Act

1st Reading

February 21st, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 11th, 1978

THE HON. R. MCMURTRY
Attorney General

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BILL 2 **Private Member's Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Employment Standards Act, 1974

MR. O'NEIL



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of this Bill is to increase the time for notice to an employee whose employment is to be terminated where the employer plans to terminate the employment of fifty or more employees within a short period of time. The Bill also requires the employer, when requested, to confer with the Minister and any trade union that represents the employees to discuss alternative methods of reducing the number of terminations.

BILL 2 **1978**

An Act to amend The Employment Standards Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 2 of section 40 of *The Employment Standards Act, 1974*, being chapter 112, is repealed and the following substituted therefor: s. 40 (2), re-enacted

(2) Notwithstanding subsection 1, the notice required by an employer to terminate the employment of fifty or more employees in any period of twelve weeks or less shall be not less than, Notice of lay-off

(*a*) sixteen weeks notice if the employment of fifty or more persons and fewer than 200 persons is to be terminated at an establishment;

(*b*) twenty-four weeks notice if the employment of 200 or more persons and fewer than 500 persons is to be terminated at an establishment; and

(*c*) thirty-two weeks notice if the employment of 500 or more persons is to be terminated at an establishment,

and until the expiry of such notice the termination shall not take effect.

(2) The said section 40 is amended by adding thereto the following subsection: s. 40, amended

(2*a*) In the event of a termination referred to in subsection 2, an employer shall give notice at the same time that notice is given under subsection 2 to the Minister and any trade union that represents employees whose employment the employer proposes to terminate indicating, Duty to confer

(*a*) the number of employees whose employment will be terminated;

(*b*) a statement of the reasons for the terminations,

and, where the Minister or a trade union so requests, the employer shall confer with the Minister or trade union or a representative thereof with a view to considering in good faith alternative plans to reduce the number of terminations.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Employment Standards Amendment Act, 1978*.

BILL 7

An Act to amend
The Employment Standards Act, 1974

1st Reading

February 21st, 1978

2nd Reading

3rd Reading

MR. O'NEIL

(*Private Member's Bill*)

1978

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BILL 3 **Private Member's Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to require a Single Price for Gasoline and Heating Oil sold in Ontario by a Wholesaler

MR. LANE



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of this Bill is to require a wholesaler of gasoline and heating oil in Ontario to sell his gasoline or heating oil product at a single price throughout the province thereby preventing the wholesaler from charging a higher price in certain regions.

BILL 3 **1978**

An Act to require a Single Price for Gasoline and Heating Oil sold in Ontario by a Wholesaler

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(*a*) "gasoline" means any gas or liquid that may be used for the purpose of generating power by means of internal combustion and includes any substance added thereto, but does not include the following products, except when any such product is mixed or combined with gasoline,

(i) aviation fuel, except when used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,

(ii) the products commonly known as diesel fuel, fuel oil, coal oil or kerosene,

(iii) natural or manufactured gas, or any product that is commonly known as a liquefied petroleum gas, when any of them is purchased exclusively for use otherwise than to supply power to propel any vehicle of any kind on a highway within the meaning of *The Highway Traffic Act*; R.S.O. 1970, c. 202

(*b*) "heating oil" means any petroleum product used for the purpose of heating a residential home;

(*c*) "Minister" means the Minister of Energy;

(*d*) "retailer" means a person who sells gasoline or heating oil for use by a purchaser and not for resale;

(*e*) "uniform gasoline price" means the wholesale price charged for gasoline per imperial gallon at a point in time, which price shall be the same in respect of every sale made to a retailer carrying on business in Ontario;

(*f*) "uniform heating oil price" means the wholesale price charged for heating oil per imperial gallon at a point in time, which price shall be the same in respect of every sale made to a retailer carrying on business in Ontario;

(*g*) "wholesale price" means a price charged by a wholesaler in a sale to a retailer;

(*h*) "wholesaler" means a person who sells gasoline or heating oil for the purpose of resale.

Gasoline, etc., to be sold at uniform price in Ontario

2. No wholesaler shall sell gasoline or heating oil in Ontario for a price higher than the uniform gasoline price or uniform heating oil price, as the case may be, as determined by the wholesaler in accordance with this Act.

Liability of wholesaler

3. Where, contrary to section 2, a wholesaler has derived excess revenue by charging a price for gasoline or heating oil higher than the uniform gasoline price or uniform heating oil price, he is liable to return to each person from whom he derived the excess revenue an amount equal to the whole of the excess revenue derived from such person.

Offence

4.—(1) Every wholesaler who contravenes section 2 and every director or officer of a wholesaler who knowingly concurs in such contravention is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Corporation

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein.

Uniform price may be varied

5. Nothing in this Act shall be construed to prevent a wholesaler from varying the level of the uniform gasoline price or uniform heating oil price from time to time provided that the variation is made in such a manner that the price continues to be, at every point in time, a uniform price.

Regulations

6. The Minister, subject to the approval of the Lieutenant Governor in Council, may make regulations exempting any wholesaler, either generally or in respect of a particular sale or particular class of sale, from the application of this Act.

7. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

8. The short title of this Act is *The Gasoline and Heating Oil Uniform Pricing Act, 1978.* Short title

An Act to require a Single Price for Gasoline and Heating Oil sold in Ontario by a Wholesaler

---

1st Reading

February 22nd, 1978

2nd Reading

3rd Reading

Mr. Lane

(*Private Member's Bill*)

1978

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BILL 4 **Private Member's Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Assessment Act

MR. LELUK



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The Bill provides an exemption from municipal taxation for additions and improvements to residential property that are designed to aid persons who are physically disabled.

BILL 4 **1978**

An Act to amend The Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The Assessment Act*, being chapter 32 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 26, section 1 and 1974, chapter 41, section 2, is further amended by adding thereto the following paragraph: s. 3. amended

21. All equipment, devices, installations and structures, located in or on lands and buildings used for residential purposes, that are designed for use by persons who are physically disabled and are affixed, installed or built for the purpose of enhancing the use and enjoyment of the land and buildings by such persons. Equipment, etc., for physically disabled

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Assessment Amendment Act, 1978*. Short title

An Act to amend
The Assessment Act

1st Reading

February 22nd, 1978

2nd Reading

3rd Reading

MR. LELUK

(*Private Member's Bill*)

1978

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Government
Publications

BILL 5

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The City of Timmins-Porcupine Act, 1972

THE HON. W. D. MCKEOUGH
Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs

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Explanatory Note

The new subsection 4*a* provides that the order of the Minister, made under subsection 4 of section 3 of the Act, dividing the City into wards and providing for the number of aldermen to be elected in each ward remains in effect until altered by the Municipal Board.

Subsection 4 reads as follows:

(4) *For the purpose of the election to be held in the year 1972 and in the year 1974, the Minister may by order divide the City into wards and make provision for the election of members of council in relation to such wards, in the manner prescribed in the order.*

The new subsection 4*b* confers authority on the Board to alter or dissolve the ward division of the City on application therefor. Substantially similar provisions are to be found in the various Acts establishing regional municipalities in those instances where the ward division of the area municipalities was similarly initially established by order of the Minister.

BILL 5 **1978**

An Act to amend The City of Timmins-Porcupine Act, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The City of Timmins-Porcupine Act, 1972*, being chapter 117, is amended by adding thereto the following subsections: s. 3, amended

(4*a*) The order of the Minister, made under subsection 4, dividing the City into wards and providing for the number of members of council to be elected in the respective wards, remains in effect until altered by the Ontario Municipal Board. Wards, etc., to remain in effect until altered by O.M.B.

(4*b*) Notwithstanding the provisions of this or any other Act, upon the application of the City authorized by a by-law of the council thereof, or upon the petition of electors in accordance with the provisions of section 13 of *The Municipal Act*, the Ontario Municipal Board may, by order, Alteration of wards, etc., by O.M.B. R.S.O. 1970, c. 284

(*a*) redivide the City into wards and shall designate the name or number that each ward shall bear and shall declare the date when the redivision shall take effect;

(*b*) alter or dissolve any or all of the wards in the City and shall declare the date when such alterations or dissolutions shall take effect; or

(*c*) vary the composition of the council of the City,

provided that,

(*d*) the mayor of the City shall continue to be elected by a general vote of the electors of the City and shall be the head of the council of the City.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The City of Timmins-Porcupine Amendment Act, 1978*.

BILL 5 **1978**

An Act to amend The City of Timmins-Porcupine Act, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The City of Timmins-Porcupine Act, 1972*, being chapter 117, is amended by adding thereto the following subsections: s. 3, amended

(4*a*) The order of the Minister, made under subsection 4, dividing the City into wards and providing for the number of members of council to be elected in the respective wards, remains in effect until altered by the Ontario Municipal Board. Wards, etc., to remain in effect until altered by O.M.B.

(4*b*) Notwithstanding the provisions of this or any other Act, upon the application of the City authorized by a by-law of the council thereof, or upon the petition of electors in accordance with the provisions of section 13 of *The Municipal Act*, the Ontario Municipal Board may, by order, Alteration of wards, etc., by O.M.B. R.S.O. 1970, c. 284

(*a*) redivide the City into wards and shall designate the name or number that each ward shall bear and shall declare the date when the redivision shall take effect;

(*b*) alter or dissolve any or all of the wards in the City and shall declare the date when such alterations or dissolutions shall take effect; or

(*c*) vary the composition of the council of the City,

provided that,

(*d*) the mayor of the City shall continue to be elected by a general vote of the electors of the City and shall be the head of the council of the City.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The City of Timmins-Porcupine Amendment Act, 1978*.

An Act to amend
The City of Timmins-Porcupine Act, 1972

1st Reading

February 28th, 1978

2nd Reading

March 30th, 1978

3rd Reading

March 30th, 1978

The Hon. W. D. McKeough
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

1978

Government Publications

BILL 6

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Shoreline Property Assistance Act, 1973

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THE HON. W. D. MCKEOUGH
Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs

TORONTO
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Explanatory Notes

The Shoreline Property Assistance Act, 1973 provides that a municipality may make loans to property owners for the purpose of constructing certain works to protect shorelines and may borrow money from the Treasurer of Ontario for such purpose by the issuance of debentures in the prescribed form. Subsection 5 of section 5 provides that the term of such debentures is 20 years, and subsection 6 provides that the municipality may at any time repay the whole amount of the balance outstanding.

Section 1. Subsection 5 is re-enacted to clarify the repayment terms of debentures and to provide that the equal annual instalments are to be as set out in the debentures.

Subsection 6 is re-enacted to permit a partial prepayment, as well as prepayment in full.

The new subsection 6*a* provides for the method of paying the balance owing when part only of the outstanding principal is prepaid.

Section 2. Previously issued debentures are deemed to contain the provisions respecting prepayment in whole or in part as set out in subsections 6 and 6*a*.

BILL 6 **1978**

An Act to amend The Shoreline Property Assistance Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 5, and subsection 6 as re-enacted by the Statutes of Ontario, 1974, chapter 38, section 1, of section 5 of *The Shoreline Property Assistance Act, 1973*, being chapter 22, are repealed and the following substituted therefor: s. 5 (5, 6), re-enacted

(5) The term of the debentures shall be for a period of twenty years and the debentures shall provide that the principal outstanding and interest thereon shall be payable in equal annual instalments of principal and interest as set out in the debenture, each due on the anniversary date of the debenture. Term of debentures

(6) The debentures shall provide that the municipality or district, metropolitan or regional municipality, as the case may be, may, at any time, with or without giving notice or at such times and on such notice and in accordance with such other terms and conditions as may be prescribed, pay the whole or any part of the amount of principal then outstanding on the debentures and shall not be liable thereafter to pay any interest on the amount so paid other than any interest accrued thereon to the date of such prepayment. Prepayments

(6*a*) The debentures shall provide that where the municipality or district, metropolitan or regional municipality, as the case may be, pays pursuant to subsection 6 part but not all of the amount of principal then outstanding, the equal annual instalment payable for the remainder of the term of the debenture shall be determined by the Treasurer of Ontario and set out in the Schedule to the debenture. Instalments after partial prepayment

2. Debentures issued under *The Shoreline Property Assistance Act, 1973* before this Act comes into force shall be deemed to Previously issued debentures

contain the provisions set out in subsections 6 and 6*a* as enacted by section 1 of this Act.

s. 14, amended

3. Section 14 of the said Act is amended by adding thereto the following clauses:

(*c*) prescribing the terms and conditions of prepayment for the purposes of subsection 6 of section 5;

(*d*) determining the rate of interest for the purposes of subsection 4 of section 5 and subsection 2 of section 9.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is *The Shoreline Property Assistance Amendment Act, 1978.*

SECTION 3. The clauses added permit the Lieutenant Governor in Council to make regulations respecting terms and conditions of prepayment and to prescribe interest rates for debentures and for payments in default.

An Act to amend The Shoreline Property Assistance Act, 1973

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

THE HON. W. D. MCKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

(*Government Bill*)

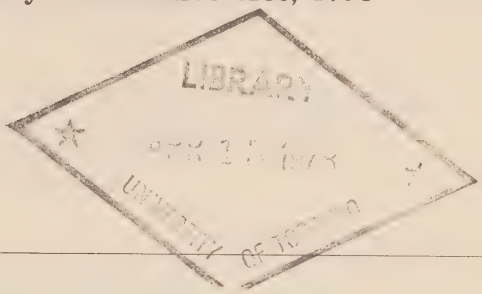
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BILL 6

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Shoreline Property Assistance Act, 1973



THE HON. W. D. MCKEOUGH
Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 6 **1978**

An Act to amend The Shoreline Property Assistance Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 5, and subsection 6 as re-enacted by the Statutes of Ontario, 1974, chapter 38, section 1, of section 5 of *The Shoreline Property Assistance Act, 1973*, being chapter 22, are repealed and the following substituted therefor: s. 5 (5, 6), re-enacted

(5) The term of the debentures shall be for a period of twenty years and the debentures shall provide that the principal outstanding and interest thereon shall be payable in equal annual instalments of principal and interest as set out in the debenture, each due on the anniversary date of the debenture. Term of debentures

(6) The debentures shall provide that the municipality or district, metropolitan or regional municipality, as the case may be, may, at any time, with or without giving notice or at such times and on such notice and in accordance with such other terms and conditions as may be prescribed, pay the whole or any part of the amount of principal then outstanding on the debentures and shall not be liable thereafter to pay any interest on the amount so paid other than any interest accrued thereon to the date of such prepayment. Prepayments

(6*a*) The debentures shall provide that where the municipality or district, metropolitan or regional municipality, as the case may be, pays pursuant to subsection 6 part but not all of the amount of principal then outstanding, the equal annual instalment payable for the remainder of the term of the debenture shall be determined by the Treasurer of Ontario and set out in the Schedule to the debenture. Instalments after partial prepayment

2. Debentures issued under *The Shoreline Property Assistance Act, 1973* before this Act comes into force shall be deemed to Previously issued debentures

contain the provisions set out in subsections 6 and 6*a* of section 5 of the said Act as enacted by section 1 of this Act.

s. 14, amended

3. Section 14 of the said Act is amended by adding thereto the following clauses:

(*c*) prescribing the terms and conditions of prepayment for the purposes of subsection 6 of section 5;

(*d*) determining the rate of interest for the purposes of subsection 4 of section 5 and subsection 2 of section 9.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is *The Shoreline Property Assistance Amendment Act, 1978*.

An Act to amend The Shoreline Property Assistance Act, 1973

1st Reading

February 28th, 1978

2nd Reading

March 30th, 1978

3rd Reading

March 30th, 1978

THE HON. W. D. MCKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

1978

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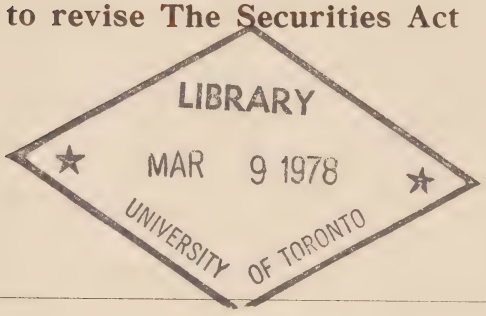
Government
Publications

BILL 7

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Securities Act



THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

TORONTO
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Explanatory Note

The Bill is a revision of *The Securities Act*.

The purpose of the revision is to:

(*a*) implement those recommendations of The Report of The Canadian Committee on Mutual Funds and Investment Contracts concerning financial reporting by mutual funds, insider trading and liability, a standard of care for mutual fund managers and self-dealing investments.

(*b*) establish a system providing continuous disclosure of material information on the affairs of reporting issuers which, in turn, following an 18 month transitional period during which an information base will be established and the concept of "distribution to the public" retained, will permit a more exhaustive and objective definition of when securities may be traded without restriction;

(*c*) withdraw the exemption for take-overs to be effected in the over-the-counter market while continuing the exemptions for take-overs through the facilities of a recognized stock exchange, bids for the shares of private companies and, where no premium over market price is paid, private agreements and introducing a *de minimus* exemption for acquisitions of up to 5 per cent of the shares of an issuer in any twelve month period;

(*d*) require, where an issuer makes an offer to purchase its own securities, disclosure similar to that called for on take-over bids;

(*e*) expand insider liability from insiders and their associates to include "tippees", i.e., anyone trading securities with knowledge of a material fact or change in respect of the issuer that has not been generally disclosed, to make the informing, or "tipping", of another person or company of that material fact or change an offence and by parallel amendment remove insider reporting and liability from *The Business Corporations Act*;

(*f*) require financial institutions, i.e., banks, loan and trust companies and insurance companies, to obtain registration where, as either principal or agent, they trade in securities with the public while continuing the exemption from registration as dealer where banks and trust companies transmit unsolicited orders for execution through a registrant and the exemption of banks from registration as underwritier with respect to government and municipal securities;

(*g*) require that financial institutions be subject to the continuous disclosure and insider reporting provisions of the legislation;

(*h*) remove matters such as proxy solicitation generally regarded as corporate law from *The Securities Act* and, at the same time, by parallel amendments to *The Business Corporations Act* consolidate investor disclosure in *The Securities Act*;

(*i*) amend some existing provisions of securities legislation in an effort to effectively achieve their purpose; and

(*j*) reorganize *The Securities Act* into a more logical format leaving fundamental principles in the Act and the detailed implementation to the regulation making powers.

BILL 7 **1978**

An Act to revise The Securities Act

HER MAJESTY, by and with advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act, Interpretation

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;
2. "associate", where used to indicate a relationship with any person or company means,
   i. any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
   ii. any partners of that person or company,
   iii. any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
   iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person;
3. "Commission" means the Ontario Securities Commission;
4. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

5. "contract" includes a trust agreement, declaration of trust or other similar instrument;

6. "contractual plan" means any contract or other arrangement for the purchase of shares or units of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

7. "dealer" means a person or company who trades in securities in the capacity of principal or agent;

8. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

9. "Director" means the Director or any Deputy Director of the Commission;

10. "director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

11. "distribution", where used in relation to trading in securities, means,

    i. a trade in securities of an issuer that have not been previously issued,

    ii. a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

    iii. a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons and companies holding more than 20 per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

iv. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this Act if those securities continue on the day this Act comes into force to be owned by or for that underwriter, so acting,

v. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the coming into force of this Act, if the trade takes place during that eighteen months,

and after the coming into force of subsections 4, 5, 6 and 7 of section 71, includes a distribution as therein referred to, and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and "distribute", "distributed" and "distributing" have a corresponding meaning;

12. "distribution company" means a person or company distributing securities under a distribution contract;

13. "distribution contract" means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund;

14. "distribution to the public", where used in relation to trading in securities, means a distribution that is made for the purpose of distributing to the public securities issued by an issuer, whether such trades are made directly to the public through an underwriter or otherwise;

15. "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy;

16. "individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organiza-

tion, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative;

17. "insider" or "insider of a reporting issuer" means,

    i. every director or senior officer of a reporting issuer,

    ii. every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,

    iii. any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than 10 per cent of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and

    iv. a reporting issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

18. "issuer" means a person or company who has outstanding, issues or proposes to issue, a security;

19. "management company" means a person or company who provides investment advice, under a management contract;

20. "management contract" means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration;

21. "material change" where used in relation to the affairs of an issuer means a change in the business or operations of the issuer that significantly affects, or would reasonably be expected to have a significant effect on, the market price of any of the securities of the issuer;

22. "material fact" where used in relation to securities issued or proposed to be issued means a fact that significantly affects, or would reasonably be expected

to have a significant effect on, the market price of such securities;

23. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

24. "misrepresentation" means,

    i. an untrue statement of material fact, or

    ii. an omission to state a material fact;

25. "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

26. "mutual fund in Ontario" means a mutual fund that is a reporting issuer or that is organized under the laws of Ontario, but does not include a private mutual fund;

27. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

28. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

29. "portfolio manager" means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;

30. "portfolio securities", where used in relation to a mutual fund, means securities traded within the last thirty days, held, or proposed to be purchased by the mutual fund;

31. "private company" means a company in whose constating document,

i. the right to transfer its shares is restricted,

ii. the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be, shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and

iii. any invitation to the public to subscribe for its securities is prohibited;

32. "private mutual fund" means a mutual fund that is,

i. operated as an investment club, where,

(*a*) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public;

(*b*) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees; and

(*c*) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations, or

ii. administered by a trust company registered under *The Loan and Trust Corporations Act* and consists of,

R.S.O. 1970, c. 254

(*a*) a pooled fund maintained solely to serve its registered retirement savings plans, registered home ownership savings plans, or other savings plans registered under the *Income Tax Act* (Canada);

R.S.C. 1952, c. 148

(*b*) a common trust fund as defined by subsection 1 of section 85 of *The Loan and Trust Corporations Act*; or

(*c*) a pooled fund maintained by a trust company in which moneys belonging to various trusts in its care are commingled with the authority of its settlor, testator or trustee for the purpose of facilitating investment;

33. "promoter" means,

i. a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

ii. a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

34. "proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;

35. "register" means register under this Act, and "registered" has a corresponding meaning;

36. "registrant" means a person or company registered or required to be registered under this Act;

37. "regulations" means the regulations made under this Act;

38. "reporting issuer" means an issuer,

i. that has issued voting securities on or after the 1st day of May, 1967 in respect of which a prospectus was filed and a receipt therefor obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,

ii. that has filed a prospectus and obtained a receipt therefor under this Act or that has filed a securities exchange take-over bid circular under this Act,

iii. any of whose securities have been at any time since the coming into force of this Act listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

R.S.O. 1970, c. 53

iv. to which *The Business Corporations Act* applies and which, for the purposes of that Act, is offering its securities to the public, or

v. that is the company whose existence continues following the exchange of securities of a company by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(*a*) a statutory amalgamation or arrangement; or

(*b*) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,

where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months;

39. "salesman" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

40. "security" includes,

i. any document, instrument or writing commonly known as a security,

ii. any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,

iii. any document constituting evidence of an interest in an association of legatees or heirs,

iv. any document constituting evidence of an option, subscription or other interest in or to a security,

v. any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate, subscription or any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets,

vi. any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,

vii. any certificate of share or interest in a trust, estate or association,

viii. any profit-sharing agreement or certificate,

ix. any certificate or interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

x. any oil or natural gas royalties or leases or fractional or other interest therein,

xi. any collateral trust certificate,

xii. any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*, R.S.O. 1970, c. 226

R.S.O. 1970, c. 226

xiii. any investment contract, other than an investment contract within the meaning of *The Investment Contracts Act*,

xiv. any document constituting evidence of an interest in a scholarship or educational plan or trust,

xv. any document constituting evidence of an agreement purporting to grant an exclusive right to use or occupy any part of specific real property for residential, recreational or vacation purposes for a specific time or times within any specific period of time where the agreement contemplates the grant of the same or similar rights to other persons or companies on a time sharing basis with respect to the specific real property, and

1978, c. ...

xvi. any commodity futures contract or any commodity futures option within the meaning of *The Commodity Futures Act, 1978* except where such commodity futures contract or commodity futures option is traded on a commodity futures exchange registered or recognized by the Commission under *The Commodity Futures Act, 1978*,

whether any of the foregoing relate to an issuer or proposed issuer;

41. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of an issuer, including any individual referred to in subparagraph i;

42. "trade" or "trading" includes,

i. any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subpara-

graph iv, a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt,

ii. any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,

iii. any receipt by a registrant of an order to buy or sell a security,

iv. any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subparagraph iii of paragraph 11 for the purpose of giving collateral for a *bona fide* debt, and

v. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

43. "underwriter" means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

i. a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,

ii. a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

iii. a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

iv. a bank to which the *Bank Act* (Canada) applies with respect to the securities described in paragraph 1 of subsection 2 of section 34; R.S.C. 1970, c. B-1

44. "voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

Affiliated companies

(2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.

Controlled companies

(3) A company shall be deemed to be controlled by another person or company or by two or more companies if,

(*a*) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and

(*b*) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Subsidiary companies

(4) A company shall be deemed to be a subsidiary of another company if,

(*a*) it is controlled by,

(i) that other, or

(ii) that other and one or more companies each of which is controlled by that other, or

(iii) two or more companies each of which is controlled by that other; or

(*b*) it is a subsidiary of a company that is that other's subsidiary.

Beneficial ownership of securities

(5) A person shall be deemed to own beneficially securities beneficially owned by a company controlled by him or by an affiliate of such company.

Idem

(6) A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

Insider of mutual fund

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company and distribution company shall be deemed to be an insider of the mutual fund.

Issuer as insider of reporting issuer

(8) Where an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the reporting issuer for the pre-

vious six months or for such shorter period that he was a director or senior officer of the issuer.

Reporting issuer as insider of other reporting issuer

(9) Where a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer shall be deemed to have been an insider of the first-mentioned reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the second-mentioned reporting issuer. R.S.O. 1970, c. 426, s. 1, *amended*.

PART I

THE COMMISSION

Commission

2.—(1) The Commission is continued and is responsible for the administration of this Act.

Appointment

(2) The Commission shall be composed of a Chairman and not more than eight other members, appointed by the Lieutenant Governor in Council, one of whom shall be designated as Vice-Chairman.

Quorum

(3) Two members of the Commission constitute a quorum. R.S.O. 1970, c. 426, s. 2, *amended*.

Chairman and members

3.—(1) The Chairman shall be the chief executive officer of the Commission and shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Commission.

Delegation of powers

(2) The Chairman, Vice-Chairman or any member of the Commission may exercise the powers and shall perform such duties vested in or imposed upon the Commission by this Act or the regulations as are assigned to him by the Commission.

Eligibility to sit on hearing

(3) Where the person who exercises the powers and performs the duties vested in the Commission by sections 11 to 17 pursuant to an assignment under subsection 2, receives the report of an investigation ordered under section 11 and on the basis of such report issues an *ex parte* order or a direction that proceedings be instituted by the Commission under section 26, 69, 123 or 124 such person shall not sit on the hearing required to be held by the Commission except with the written consent of the party directly affected by the proceedings.

Review

(4) Every decision made pursuant to an assignment under subsection 2 is subject to review by the Commission under

section 8 in the same manner as if it had been made by the Director, and the person who made the decision shall not sit on the hearing and review thereof by the Commission. R.S.O. 1970, c. 426, s. 3, *amended*.

PART II

FINANCIAL DISCLOSURE ADVISORY BOARD

Financial Disclosure Advisory Board

4.—(1) The Financial Disclosure Advisory Board established under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970, is continued and shall be composed of not more than five members appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Financial Disclosure Advisory Board shall meet at the call of the Commission.

Duties

(3) The Financial Disclosure Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning the financial disclosure requirements of this Act and the regulations.

Remuneration

(4) The members of The Financial Disclosure Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board. R.S.O. 1970, c. 426, s. 146, *amended*.

PART III

APPOINTMENT OF EXPERTS

Appointment of experts

5.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and

things as is vested in the Commission, and subsections 3 and 4 of section 11 apply *mutatis mutandis*.

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine. *New*. Payment of experts

PART IV

THE DIRECTOR

6. The Director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission except those referred to in section 8 and sections 11 to 17 and, subject to the direction of the Commission, he is the chief administrative officer of the Commission. R.S.O. 1970, c. 426, s. 4. Director

7. Where, Refunds

(*a*) an application for registration or renewal of registration is abandoned; or

(*b*) a preliminary prospectus or prospectus is withdrawn,

the Director may, upon the application of the person or company who made the application or filed the preliminary prospectus or prospectus, recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or the filing of the preliminary prospectus or prospectus or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund. R.S.O. 1970, c. 426, s. 17.

PART V

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

8.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 25 or refusing to issue a receipt for a prospectus under section 60 and the Commission may within thirty days of the decision notify the Director and any person or company directly Notification of decision

affected of its intention to convene a hearing to review the decision. *New.*

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper. R.S.O. 1970, c. 426, s. 28; 1971, c. 31, s. 5.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2 of this section or subsection 4 of section 3, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. 1973, c. 11, s. 1.

Appeal

9.—(1) Any person or company directly affected by a decision of the Commission, other than a decision under section 73, may appeal to the Supreme Court.

Stay

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal.

Certification of documents

(3) The Secretary shall certify to the Registrar of the Supreme Court,

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

Minister entitled to appear

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court, on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. 1973, c. 11, s. 2, *amended*. Further decisions

10.—(1) There shall be a Secretary to the Commission who may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 9; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

(2) Where the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated may exercise all the powers vested in the Secretary by this Act or the regulations. Acting Secretary

(3) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution. *New*. Certification by Secretary

PART VI

INVESTIGATIONS

Investigation order

11.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a trade in securities,

the Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions

promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section. R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities or other property are seized under subsection 6, the documents, records, securities or other property shall be made available for inspection and copying by the person or company from whom seized at a mutally convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated. R.S.O. 1970, c. 426, s. 21 (1-8).

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation. R.S.O. 1970, c. 426, s. 21 (9), *amended*.

Report to Minister

12. Where upon the report of an investigation made under section 11 it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to securities,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister. R.S.O. 1970, c. 426, s. 22.

Investigation by order of Minister

13. Notwithstanding section 11, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights, and privileges as a person appointed under section 11. R.S.O. 1970, c. 426, s. 23.

Evidence not to be disclosed

14. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 11 or 13.

Report to Minister

15. Where an investigation has been made under section 11, the Commission may, and, where an investigation has been made under section 13, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. R.S.O. 1970, c. 426, s. 25.

Order to freeze property

16.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b*, *c* or *d* to hold such funds or securities or direct the person or company referred to in clause *a*, *b*, *c* or *d* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 17 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-3, W-10, R.S.O. 1970, cc. 228, 89, 53

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification. R.S.O. 1970, c. 426, s. 26 (1, 2), *amended*.

Application for directions

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions it may impose revoking the direction or consenting to the release of any fund or security. *New*.

Revocation or amendment of direction

Notice to land registry offices

(4) In any of the circumstances mentioned in clause *a*, *b*, *c*, or *d* of subsection 1, the Commission may in writing or by telegram notify any land registrar or mining recorder that proceedings are being or are about to be taken that may affect land or mining claims belonging to the person or company referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate of *lis pendens* or a caution, and the Commission may in writing revoke or modify the notice. R.S.O. 1970, c. 426, s. 26 (3), *amended*.

Appointment of receiver, etc.

17.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities;

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company; or

(*e*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for the person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or

of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company. R.S.O. 1970, c. 426, s. 27 (1, 2), *amended*.

Ex parte application

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. R.S.O. 1970, c. 426, s. 27 (3), *amended*.

Powers of receiver, etc.

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

Enforcement of order

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Rules of practice

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. R.S.O. 1970, c. 426, s. 27 (4-6), *amended*.

PART VII

AUDITS

Audits by Commission

18.—(1) Notwithstanding anything in sections 19, 20 and 21, the Commission may in writing appoint any person to examine at any time,

(*a*) the financial affairs of a registrant or a reporting issuer; and

(*b*) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Commission.

Access to records

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. R.S.O. 1970, c. 426, s. 33, *amended*.

PART VIII

SELF-REGULATION—GENERALLY

Panel of auditors

19. Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario, shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, district association auditor or association auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years. R.S.O. 1970, c. 426, s. 30, *amended*.

Audits by stock exchange and associations

20.—(1) Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 19 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, district association auditor or association auditor, as the case may be.

(2) The by-laws, rules and regulations of every stock exchange in Ontario recognized by the Commission, the rules and regulations of the Ontario District of the Investment Dealers' Association of Canada and the regulations of the Broker-Dealers' Association of Ontario in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission. R.S.O. 1970, c. 426, s. 31. Audit by-laws subject to approval

21. Every registrant whose financial affairs are not subject to examination under section 20 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditor of the registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe. R.S.O. 1970, c. 426, s. 32. Filing of financial statements of registrants

PART IX

STOCK EXCHANGES

22.—(1) No person or company shall carry on business as a stock exchange in Ontario unless such stock exchange is recognized in writing as such by the Commission. Stock exchanges

(2) The Commission may, where it appears to it to be in the public interest, make any decision, Commission's powers

(*a*) with respect to the manner in which any stock exchange in Ontario carries on business;

(*b*) with respect to any by-law, ruling, instruction, or regulation of any such stock exchange;

(*c*) with respect to trading on or through the facilities of any such stock exchange or with respect to any security listed and posted for trading on any such stock exchange; or

(*d*) to ensure that issuers whose securities are listed and posted for trading on any such stock exchange comply with this Act and the regulations.

Review of decisions of stock exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a stock exchange in Ontario may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director. R.S.O. 1970, c. 426, s. 140.

Record of transactions

23. Every stock exchange in Ontario shall keep a record showing the time at which each transaction on such stock exchange took place and shall supply to any customer of any member of such stock exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation. R.S.O. 1970, c. 426, s. 141.

PART X

REGISTRATION

Registration for trading

24.—(1) No person or company shall,

(*a*) trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

(*b*) act as an underwriter unless the person or company is registered as an underwriter; or

(*c*) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions. R.S.O. 1970, c. 426, s. 6 (1), *amended*.

Termination re salesman

(2) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until notice in writing has been received by the Director from another registered dealer of the employment of the salesman by the other registered dealer and the reinstatement of the registration has been approved by the Director.

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman. R.S.O. 1970, c. 426, s. 6 (4, 5). Non-trading employee

25.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where in the opinion of the Director the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable. R.S.O. 1970, c. 426, s. 7 (1), *amended*. Granting of registration

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities. R.S.O. 1970, c. 426, s. 7 (3). Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. R.S.O. 1970, c. 426, s. 7 (2). Refusal

26.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 8. R.S.O. 1970, c. 426, s. 8, *amended*. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. *New*. Surrender

Subsequent applications

27. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1970, c. 426, s. 9.

Application

28. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. R.S.O. 1970, c. 426, s. 10.

Address for service

29. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1970, c. 426, s. 11.

Further information

30. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director. R.S.O. 1970, c. 426, s. 12, *amended*.

Residence

31.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration and if he is not a resident of Ontario at the date of the application unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer, or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration and is not a resident of Ontario at the date of the application unless at the time of the application he

is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration. R.S.O. 1970, c. 426, s. 14, *amended*.

Notice of changes

32.—(1) Every registered dealer shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) (i) any change in the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and, in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem

(2) Every registered adviser and underwriter shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) (i) any change in the directors or officers of the registered adviser or underwriter and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered adviser or underwriter.

Idem

(3) Every registered salesman shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions

(4) The Director may, upon an application of a registrant that is a reporting issuer, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 15, *amended*.

PART XI

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

33. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer or teacher;

(*c*) a registered dealer, or any partner, officer or employee thereof; and

(*d*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*e*) such other persons or companies as are designated by the regulations. R.S.O. 1970, c. 426, s. 18, *amended*.

Exemption of trades

34.—(1) Subject to the regulations, registration is not required in respect of the following trades:

1. A trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada) or by a receiver under *The Judicature Act* or by a liquidator under *The Corporations Act*, *The Business Corporations Act*, or the *Winding-up Act* (Canada), or at a judicial sale. R.S.C. 1970, cc. B-3, W-10 R.S.O. 1970, cc. 228, 89, 53

2. An isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.

3. A trade where the party purchasing as principal, but not as underwriter, is,

   i. a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

   ii. a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

   iii. an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

   iv. Her Majesty in right of Canada or any province or territory of Canada, or

   v. any municipal corporation or public board or commission in Canada.

4. A trade where the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser.

5. A trade where the purchaser purchases as principal, if the trade is in a security which has an aggregate

acquisition cost to such purchaser of not less than $97,000.

6. A trade from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt.

7. A trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt.

8. A trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Director as non-trading employees, either individually or as a class.

9. A trade between a person or company and an underwriter acting as purchaser or between or among underwriters.

10. A trade in a security by a person or company acting solely through an agent who is a registered dealer.

11. The execution of an unsolicited order to purchase or sell through a registered dealer by a bank to which the *Bank Act* (Canada) applies or a trust company registered under *The Loan and Trust Corporations Act* as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company.

R.S.C. 1970, c. B-1
R.S.O. 1970, c. 254

12. A trade by an issuer,

    i. in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

    ii. in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws

of the jurisdiction in which the issuer was incorporated, organized or continued,

iii. in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer.

13. A trade by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie.

14. A trade by an issuer,

i. in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

ii. in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and either,

(*a*) the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade; or

(*b*) the issuer has delivered to the Commission information relating to the securities that is satisfactory to and accepted by the Commission.

15. A trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with,

(*a*) a statutory amalgamation or arrangement; or

(*b*) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company.

16. A trade in a security of a company that is exchanged by or for the account of the company with the security holders of another company in connection with a take-over bid as defined in Part XIX.

17. A trade in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88.

18. A trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000.

19. A trade by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment.

20. A trade by an issuer in securities of its own issue to not more than five incorporators or organizers where such trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the consideration received by the issuer for the securities is nominal.

21. A trade made by an issuer with a view to the sale of securities of its own issue if solicitations are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

i. each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase, except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,

ii. each purchaser,

(*a*) is an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a registered adviser, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer or has access to substantially the same information concerning the issuer which the filing of a prospectus under this Act would provide; or

(*b*) is a senior officer or director of the issuer or his spouse, parent, brother, sister, or child,

iii. the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

iv. no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this paragraph within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption.

22. A trade in a commodity futures option or a commodity futures contract by a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. ....

23. A trade in respect of which the regulations provide that registration is not required.

Exemption re securities

(2) Subject to the regulations, registration is not required to trade in the following securities:

1. Bonds, debentures or other evidences of indebtedness,

(*a*) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any

foreign country or any political division thereof;

(*b*) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated;

R.S.C. 1970, c. B-1
R.S.O. 1970, cc. 254, 224

(*c*) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company or loan corporation registered under *The Loan and Trust Corporations Act* or an insurance company licensed under *The Insurance Act*; or

R.S.C. 1970, c. B-9

(*d*) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America.

R.S.O. 1970, c. 224

2. Contracts of insurance issued by an insurance company licensed under *The Insurance Act* other than variable contracts that do not guarantee to return on the termination of the policy an amount equal to at least three-quarters of the premiums paid to the date of termination.

R.S.O. 1970, c. 254

3. Certificates or receipts issued by a trust company registered under *The Loan and Trust Corporations Act* for moneys received for guaranteed investment.

4. Securities issued by a private mutual fund, other than those variable contracts excluded from the exemption provided by paragraph 2 and securities designated by the regulations as not qualifying for purposes of the exemption provided by this paragraph.

5. Negotiable promissory notes or commercial paper maturing not more than one year from the date of

issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than $50,000.

6. Mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under *The Mortgage Brokers Act*. R.S.O. 1970, c. 278

7. Securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual.

   Securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.

9. Securities issued by corporations to which *The Co-operative Corporations Act, 1973* applies. 1973, c. 101

10. Shares of a credit union within the meaning of *The Credit Unions and Caisses Populaires Act, 1976*. 1976, c. 62

11. Securities of a private company where they are not offered for sale to the public.

12. Securities issued and sold by a prospector for the purpose of financing a prospecting expedition.

13. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, where the securities are sold by the prospector or one of the prospectors who staked claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate, and the prospector delivers the copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor.

14. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, if the securities are not offered for sale to the public and are sold to not more than fifty persons or companies.

15. Securities issued by a mining company or a mining exploration company as consideration for mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary.

16. Securities in respect of which the regulations provide that registration is not required. R.S.O. 1970, c. 426, s. 19 (1, 2); 1971, c. 31, s. 3, *amended*.

Trades by trust company R.S.O. 1970, c. 254

(3) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it. *New*.

PART XII

TRADING IN SECURITIES GENERALLY

Confirmation of trade

35.—(1) Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the quantity and description of the security;

(*b*) the consideration;

(*c*) whether or not the registered dealer is acting as principal or agent;

(*d*) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;

(*e*) the date and the name of the stock exchange, if any, upon which the transaction took place;

(*f*) the commission, if any, charged in respect of the trade; and

(*g*) the name of the salesman, if any, in the transaction. R.S.O. 1970, c. 426, s. 67 (1).

Idem

(2) Where a trade is made in a security of a mutual fund, the confirmation shall contain, in addition to the requirements of subsection 1,

(*a*) the price per share or unit at which the trade was effected; and

(*b*) the amount deducted by way of sales, service and other charges.

Idem

(3) Where a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall contain in addition to the requirements of subsections 1 and 2,

(*a*) in respect of an initial payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;

(*b*) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges, that is allocated to the payment which is the subject of the confirmation;

(*c*) in respect of an initial purchase made under a contractual plan which permits the deduction of sales, service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases;

(*d*) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the confirmation is sent or delivered. *New*.

Coded identification

(4) For the purposes of clauses *d* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(5) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning. R.S.O. 1970, c. 426, s. 67 (2, 3).

Disclosure by agent

(6) Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the security was bought or sold. R.S.O. 1970, c. 426, s. 67 (4), *amended*.

Order prohibiting calls to residences

36.—(1) The Commission may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to,

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any security or in any class of securities. R.S.O. 1970, c. 426, s. 68 (1), *amended*.

Hearing

(2) The Commission shall not make an order under subsection 1 without giving the person or company or class of persons or companies affected an opportunity to be heard. *New*.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned

where an officer, director or salesman of the person or company calls or telephones on its behalf. R.S.O. 1970, c. 426, s. 68 (3, 4).

Representations prohibited

37.—(1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he or any person or company,

(*a*) will resell or repurchase; or

(*b*) will refund all or any of the purchase price of,

such security.

Future value

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

Listing

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

Application of section

(4) This section does not apply to any representation referred to in subsection 1 made to a person or to a company where the representation is contained in a written agreement signed by the person or company intending to effect a trade in a security and the security has an aggregate acquisition cost of more than $50,000. R.S.O. 1970, c. 426, s. 69, *amended*.

Where dealer is principal

38.—(1) Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract. R.S.O. 1970, c. 426, s. 70 (1).

Effect of statement

(2) A statement made in compliance with this section or clause *c* of subsection 1 of section 35 that a dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent such dealer from acting as agent in connection with a trade of such security.

Application of section

(3) This section does not apply to trades referred to in subsection 1 of section 34 or to securities referred to in subsection 2 of section 34. R.S.O. 1970, c. 426, s. 70 (3, 4).

Disclosure of financial interest of advisers and dealers

39. Subject to the regulations, every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including,

(*a*) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;

(*b*) any option that any of them may have in respect of such securities, and the terms thereof;

(*c*) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;

(*d*) any financial arrangement relating to such securities that any of them may have with any person or company; and

(*e*) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities. R.S.O. 1970, c. 426, s. 72, *amended*.

Idem

40. Every registered dealer, that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it shall, in type not less legible than that used in the body of the publication, state whether the registered dealer or any of its officers or directors has at any time during the past twelve months acted as an underwriter of such securities or for consideration provided financial advice to the issuer of such securities or is presently acting as a financial adviser to the issuer of such securities or whether the registered dealer or any of its officers or directors will receive any fees as a result of the recommended action. *New.*

Publication of names

41. Every registered dealer shall publish the name of every person or company having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the dealer, on all letterheads, circulars and stationery that contain any offer or solicitation respecting a trade in securities or in a preliminary prospectus or prospectus upon or in which the name of the registered dealer appears as underwriter. R.S.O. 1970, c. 426, s. 73, *amended.*

Use of name of another registrant

42. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S.O. 1970, c. 426, s. 74.

Registration not to be advertised

43. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. R.S.O. 1970, c. 426, s. 75.

Holding out by unregistered person

44. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. R.S.O. 1970, c. 426, s. 76.

Advertising approval by Commission

45. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security or issuer. R.S.O. 1970, c. 426, s. 77.

Margin contracts

46.—(1) Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a

registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which,

(*a*) he;

(*b*) his firm or a partner thereof; or

(*c*) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers any such contract with a customer is, at the option of the customer, voidable, and the customer may recover from the dealer all moneys paid with interest thereon or securities deposited in respect thereof.

Exercise of option

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in Ontario. R.S.O. 1970, c. 426, s. 78.

Declaration as to short position

47. Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and, who,

(*a*) at the time of placing the order, does not own the security; or

(*b*) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security. R.S.O. 1970, c. 426, s. 79.

Shares in name of registrant not to be voted

48.—(1) Subject to subsection 4, voting securities of an issuer registered in the name of,

(*a*) a registrant or in the name of his nominee; or

(*b*) a custodian or in the name of his nominee, where such issuer is a mutual fund that is a reporting issuer,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

Forwarding of information by registrant

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security so registered at the record date for notice of meeting a copy of any notice, financial statement, information circular or other material unless the beneficial owner agrees in writing that such notice, statements, circular and other material need not be sent or delivered. R.S.O. 1970, c. 426, s. 80 (1), *amended*.

Copies of information

(3) At the request of a registrant or custodian, the person or company sending material referred to in subsection 2 shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

Voting of shares

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection 1 in accordance with any written voting instructions received from the beneficial owner.

Proxies

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection 1. R.S.O. 1970, c. 426, s. 80 (3-5), *amended*.

"custodian" defined

(6) For the purpose of this section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement with a person or company engaged in, or administering a contractual plan in relation to, the distribution of securities of the mutual fund. *New*.

Submission of advertising

49.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver

to the Commission at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order pursuant to subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made pursuant to subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so. *New.*

PART XIII

PROSPECTING SYNDICATES

Agreements

50.—(1) Upon the filing of a prospecting syndicate agreement and the issuance of a receipt therefor by the Director, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement where,

(*a*) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development, or the acquisition of mining properties, or any combination thereof;

(*b*) the agreement clearly sets out,

(i) the purpose of the syndicate,

(ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,

(iii) the maximum amount, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,

(iv) the maximum number of units in the syndicate, not exceeding 33⅓ per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,

(v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Ontario and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,

(vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,

(vii) that after the sale for cash of any issued units of the syndicate no mining properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate that have been sold for cash,

(viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,

(ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,

(x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash,

(xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units; and

(*c*) the agreement limits the capital of the syndicate to a sum not exceeding $250,000.

Receipt for filed agreement

(2) The Director may in his discretion issue a receipt for a prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses *a*, *b* and *c* of subsection 1.

Application of R.S.O. 1970, c. 340

(3) After a receipt is issued by the Director for a prospecting syndicate agreement, the requirements of *The Partnerships Registration Act* as to filing do not apply to the prospecting syndicate.

Prohibition of trading by dealer

(4) No registered dealer shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal. R.S.O. 1970, c. 426, s. 34, *amended*.

Receipt

(5) The Director shall not refuse to issue a receipt under subsection 1 without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. *New*.

PART XIV

PROSPECTUSES—DISTRIBUTION

"distribution", extended meaning

51. To and including the day eighteen months after this Act comes into force, for the purposes of sections 53 to 63, "distribution" includes distribution to the public. *New*.

Prospectus required

52.—(1) No person or company shall trade in a security on his own account or on behalf of any other person or company,

(*a*) on or before the day eighteen months after this Act comes into force where such trade would be a distribution to the public of such security;

(*b*) after the day eighteen months after this Act comes into force, where such trade would be a distribution of such security,

unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director. R.S.O. 1970, c. 426, s. 35 (1); 1971, c. 31, s. 6, *amended*.

Filing without distribution

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated. *New*.

Preliminary prospectus

53.—(1) A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included.

Idem

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S.O. 1970, c. 426, s. 38, *amended*.

Receipt for preliminary prospectus

54. The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S.O. 1970, c. 426, s. 35 (2).

Prospectus

55.—(1) A prospectus shall provide full, true, and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

Supplemental material

(2) The prospectus shall contain or be accompanied by such financial statements, reports, or other documents as are required by this Act or the regulations. R.S.O. 1970, c. 426, s. 41, *amended*.

Amendment to preliminary prospectus on material change

56.—(1) Subject to subsection 2, where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 1 of section 52 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs.

Idem

(2) Where an amendment to a prospectus is filed under subsection 1 for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus such additional distribution shall not be proceeded with for a period of ten days

after the amendment is filed or, in the event the Commission informs the party filing in writing within ten days of the filing that it objects to the further distribution until such time as a receipt for the amended prospectus is obtained from the Director.

Notice of amendment

(3) An amendment to a preliminary prospectus referred to in subsection 1 shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (2, 3), *amended*.

Certificate by issuer

57.—(1) Subject to subsection 3, a prospectus filed under subsection 1 of section 52 or subsection 1 of section 61 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(2) Subject to subsection 3, a prospectus filed under subsection 2 of section 52 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.

Idem

(4) Where the Director is satisfied upon evidence or submissions made to him that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer.

(5) With the consent of the Director, a promoter need not sign the certificate in a prospectus. Idem

(6) The Director may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection 1 or 2 subject to such conditions as the Director may consider proper. Certificate of promoter

(7) With the consent of the Director, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 52, *amended*. Idem

58.—(1) Where there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus: Certificate of underwriter

> *To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 53, *amended*. Idem

59. Every prospectus shall contain a statement of the rights given to a purchaser by sections 70 and 126. R.S.O. 1970, c. 426, ss. 64 (9), 65 (8), *amended*. Statement of rights

60.—(1) Subject to subsection 2, the Director shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so. Issuance of receipt

(2) The Director shall not issue a receipt for a prospectus if it appears to him that, Refusal of receipt

(*a*) the prospectus or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) contains a misrepresentation;

(*b*) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(*c*) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(*d*) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(*e*) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(*f*) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into;

(*g*) such agreement as the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(*h*) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(*i*) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

Hearing

(3) The Director shall not refuse to issue a receipt under subsection 1 or 2 without giving the person or company who filed the prospectus an opportunity to be heard. R.S.O. 1970, c. 426, s. 61 (1, 2); 1971, c. 31, s. 16, *amended*.

Referral to Commission

(4) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus, or prospectus raises a material question involving the public interest under subsection 1 or a new or novel question of interpretation under subsection 2 that might result in the Director refusing to issue a receipt under subsection 1 or 2, the Director may refer the question to the Commission for determination.

Form of question

(5) The Director shall state the question in writing setting out the facts upon which the question is based.

Filing of question

(6) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission, and a copy of the question shall forthwith be served by the Director upon any interested person or company.

Hearing by Commission

(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration under subsections 1 and 2.

Decision of Commission

(8) Subject to any order of the Supreme Court made under section 9, the decision of the Commission on the question is binding on the Director. *New*.

Refiling of prospectus

61.—(1) No distribution of a security to which subsection 1 of section 52 applies shall continue longer than twelve months from the later of either,

(*a*) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or

(*b*) the date of the last prospectus filed under this section,

as the case may be, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Director. R.S.O. 1970, c. 426, s. 56; 1971, c. 31, s. 11, *amended*.

Idem

(2) A distribution may be continued for a further twelve months if,

(*a*) a *pro forma* prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;

(*b*) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and

(*c*) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.

Idem

(3) The continued distribution of securities after the lapse date does not contravene subsection 1 unless and until any of the conditions of subsection 2 are not complied with.

Failure to refile

(4) Subject to any extension granted under subsection 5, all trades completed in reliance upon subsection 2 after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection 2 are not complied with.

Extension of time

(5) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection 2 where in its opinion it would not be prejudicial to the public interest to do so. *New*.

Notice to Commission of distribution to public

62.—(1) No dealer shall engage in the distribution of a security to which section 52 or 61 is applicable until such dealer has notified the Commission in writing of his intention to engage in such distribution.

Notice of Commission of cessation of distribution to public

(2) Every dealer shall forthwith notify the Commission in writing when he has ceased to engage in the distribution of a security to which section 52 or 61 is applicable. R.S.O. 1970, c. 426, s. 54, *amended*.

63.—(1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations. Orders to furnish information re distribution to public

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper. R.S.O. 1970, c. 426, s. 60, *amended*. Idem

PART XV

DISTRIBUTION—GENERALLY

64.—(1) In this section, "waiting period" means the interval, which shall be at least ten days, between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus. "waiting period" defined

(2) Notwithstanding section 52, but subject to Part XII, it is permissible during the waiting period, Distribution of material during waiting period

(*a*) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be

permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(*b*) to distribute a preliminary prospectus; and

(*c*) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him. R.S.O. 1970, c. 426, s. 36.

Distribution of preliminary prospectus

65. Any dealer distributing a security to which section 64 applies shall, in addition to the requirements of clause *c* of subsection 2 of section 64, send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S.O. 1970, c. 426, s. 37, *amended*.

Distribution list

66. Any dealer distributing a security to which section 64 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. *New*.

Defective preliminary prospectus

67. Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted by subsection 2 of section 64 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (1).

Material given on distribution

68. From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause *a* of subsection 2 of section 64 or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S.O. 1970, c. 426, s. 57; 1971, c. 31, s. 12, *amended*.

69.—(1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 2 of section 60 exist, the Commission may order that the distribution of the securities under the prospectus shall cease. Order to cease trading

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded. Hearing

(3) A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates and upon every dealer who has notified the Commission of his intention to engage in the distribution of the securities, and forthwith upon the receipt of the notice, Notice

(*a*) distribution of the securities under prospectus by the person or company named in the order shall cease; and

(*b*) any receipt issued by the Director for the prospectus is revoked. R.S.O. 1970, c. 426, s. 62; 1971, c. 31, s. 17, *amended*.

70.—(1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 1 of section 52 or section 61 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after entering into such agreement. Obligation to deliver prospectus

(2) An agreement of purchase and sale referred to in subsection 1 is not binding upon the purchaser, if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after receipt by the Withdrawal from purchase

purchaser of the latest prospectus and any amendment to the prospectus.

Application of subs. 2

(3) Subsection 2 does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection 2, otherwise than to secure indebtedness, before the expiration of the time referred to in subsection 2.

Time of receipt

(4) For the purpose of this section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Receipt of prospectus by agent

(5) The receipt of the latest prospectus or any amendment to the prospectus by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection 1 shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus and any amendment to the prospectus.

Receipt of notice by agent

(6) The receipt of the notice referred to in subsection 2 by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection 1 shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice.

Dealer as agent

(7) For the purpose of this section, a dealer shall not be considered to be acting as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

Onus of proof

(8) The onus of proving that the time for giving notice under subsection 2 has expired is upon the dealer from whom the purchaser has agreed to purchase the security. R.S.O. 1970, c. 426, s. 64; 1971, c. 31, s. 19, *amended*.

PART XVI

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

Prospectus not required

71.—(1) Subject to the regulations, sections 52 and 61 do not apply to a distribution where,

(*a*) the purchaser is,

(i) a bank to which the *Bank Act* (Canada) applies or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

(ii) a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

(iii) an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

(iv) Her Majesty in right of Canada or any province or territory of Canada, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(*b*) the trade is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account, where such trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;

(*c*) the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;

(*d*) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than $97,000;

(*e*) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt;

(*f*) the trade is made by an issuer,

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer;

(*g*) the trade is made by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie;

(*h*) the trade is made by an issuer,

(i) in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and either,

a. the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or

b. the issuer has delivered to the Commission information relating to the securities that is

satisfactory to and accepted by the Commission;

(*i*) the trade is made in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;

(*j*) the trade is made in a security of a company that is exchanged by or for the account of the company with the security holders of another company in connection with a take-over bid as defined in Part XIX;

(*k*) the trade is made in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88 or by the Commission under section 99;

(*l*) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000;

(*m*) the trade is made by an issuer in a security of its own issue in consideration of mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary;

(*n*) the trade is made by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(*o*) the trade is made by an issuer in the securities of its own issue to not more than five incorporators or organizers where such trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the consideration received by the issuer for the securities is nominal;

(*p*) the trade is made by an issuer with a view to the sale of securities of its own issue if solicitations are

made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

(i) each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,

(ii) each purchaser,

a. is an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a registered adviser, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer or has access to substantially the same information concerning the issuer that the filing of a prospectus under this Act would provide, or

b. is a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

(iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption;

(*q*) the trade is made from one registered dealer to another registered dealer where the registered dealer making the purchase is acting as principal;

(*r*) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters; or

(*s*) the trade is in a commodity futures option or commodity futures contract where such trade is that of a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. ...

Trust companies deemed principals R.S.O. 1970, c. 254

(2) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

Report

(3) Where a trade has been made under clause *a*, *b*, *c*, *d*, *l*, *p* or *q* of subsection 1, the vendor shall within ten days file a report prepared and executed in accordance with the regulations.

First trades deemed distribution

(4) The first trade in securities previously acquired pursuant to an exemption contained in clause *a*, *b*, *c*, *d*, *l*, *m*, *p* or *q* of subsection 1, other than a further trade exempted by subsection 1, is a distribution, unless,

(*a*) the issuer of the security is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(*b*) (i) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission and comply with the requirements of either clause *m* or *n* of subsection 1 of section 383 of *The Insurance Act*, R.S.O. 1970, c. 224 and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer and comply with the requirements of clause *k* of subsection 1 of section 383 of *The Insurance Act* and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or

(iii) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission or are bonds, debentures

or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed, and have been held at least one year from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later; and

(*c*) the vendor files a report within ten days prepared and executed in accordance with the regulations,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

Idem

(5) The first trade in securities previously acquired under an exemption contained in clause *f*, *i*, *j*, *k* or *n* of subsection 1 and the first trade in previously issued securities of a company that has ceased to be a private company, other than a further trade exempted by subsection 1, is a distribution except where,

(*a*) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months or, in the case of securities acquired under clause *i* of subsection 1, one of the amalgamating or merged corporations or one of the continuing corporations has been a reporting issuer for twelve months and the issuer is not in default of any requirement of this Act or the regulations;

(*b*) the issuer has made disclosure of its exempt trade or in the case of a company that has ceased to be a private company the issuer has filed with the Commission such report with respect to its outstanding securities as may be required by the regulations; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the trade,

then such first trade is a distribution only if it is a distribution as defined in subparagraph iii of paragraph 11 of subsection 1 of section 1.

(6) The first trade in securities previously purchased under an exemption contained in clause *o* or *r* of subsection 1, other than a further trade exempted by subsection 1, is a distribution. Idem

(7) Sections 52 and 61 do not apply to a distribution within the meaning of subparagraph iii of paragraph 11 of subsection 1 of section 1 or by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt in accordance with clause *e* of subsection 1, if, Prospectus not required

(*a*) the distribution is exempted by subsection 1; or

(*b*) the issuer of the security is a reporting issuer and has been a reporting issuer for at least eighteen months and is not in default of any requirement of this Act or the regulations and the seller,

(i) files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than fourteen days prior to the proposed trade,

a. a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and

b. a declaration signed by each seller as at a date not more than twenty-four hours prior to its filing and prepared and executed in accordance with the regulations and certified as follows:

"The seller for whose account the securities to which this certificate relates are to be sold hereby represents that he has no knowledge of any material change which has occurred in the affairs of the issuer of the securites which has not been generally disclosed and reported to the Commission, nor has he any knowledge of any other material adverse information in regard to the current and

prospective operations of the issuer which have not been generally disclosed",

and,

(ii) files within three days after the completion of any trade a report of the trade in the form prescribed under Part XX,

provided that the notice required to be filed under sub-subclause a of subclause i and the declaration required to be filed under sub-subclause b of subclause i shall be renewed and filed at the end of sixty days after the original date of filing and thereafter at the end of each twenty-eight day period so long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of such trade. *New.*

Certificate re reporting issuer

(8) Subject to subsection 10, for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to apply to the Commission for a certificate issued for this purpose in accordance with section 137 and is entitled to rely on the certificate.

List re defaulting reporting issuers

(9) Subject to subsection 10, for the purpose of determining whether a reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers which shall be maintained by the Commission for public inspection in its offices during its normal business hours.

Exception

(10) No person or company who knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate or on the list.

Reporting issuers

(11) For the purposes of this section, an issuer shall be deemed to have been a reporting issuer from the date that it met the condition of the appropriate subclause of paragraph 38 of subsection 1 of section 1 provided that in each case it is currently in compliance with the requirements of this

Act and in the case of qualification under subclause iii of paragraph 38 of subsection 1 of section 1 it is also currently listed and posted for trading on any stock exchange in Ontario recognized by the Commission. *New.*

72.—(1) Sections 52 and 61 do not apply to a distribution of securities, Prospectus not required

(*a*) referred to in subsection 2 of section 34 excepting paragraphs 15 and 16 thereof;

(*b*) that are listed and posted for trading on any stock exchange recognized for the purpose of this section by the Commission where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange and the Commission;

(*c*) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided,

(i) the option has been written by a member of an exchange recognized by the Commission for this purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for this purpose,

(ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for this purpose, and

(iii) the option is in the form from time to time prescribed by the regulations; or

(*d*) that are exempted by the regulations.

(2) Sections 70 and 126 apply *mutatis mutandis* to a distribution under clause *b* of subsection 1 as if sections 52 and 61 were applicable thereto, and the statement of Application of ss. 70 and 126

material facts referred to in clause *b* of subsection 1 shall be deemed conclusively to be a prospectus for the purposes of sections 70 and 126. *New.*

Order exempting from registration a prospectus

73.—(1) The Commission may, upon the application of an interested person or company, rule that an intended trade is not subject to section 24 or 52 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary. 1971, c. 31, s. 14, *part, amended.*

Determination of whether distribution has ceased

(2) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly.

Ruling final

(3) A decision of the Commission under this section is final and there is no appeal therefrom. 1971, c. 31, s. 14, *part.*

PART XVII

CONTINUOUS DISCLOSURE

Publication of material change

74.—(1) Subject to subsection 3, where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a press release authorized by a senior officer disclosing the nature and substance of such change, but where the material change results from a proposed decision by management or from negotiations, this section shall apply with respect thereto only at the earlier of,

(*a*) the time a decision accepting or recommending acceptance of the proposed decision or the transaction resulting from the negotiations has been made; or

(*b*) the time when officers of the issuer first have reason to believe that persons with knowledge of the material change have purchased or sold securities of the issuer.

Report of material change

(2) Subject to subsection 3, the reporting issuer shall file a report of such change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

Idem

(3) Where in the opinion of the reporting issuer, the disclosure required by subsections 1 and 2 would be unduly

detrimental to the interests of the reporting issuer, it shall forthwith deliver to the Commission the report required under subsection 2 marked "confidential" together with written reasons for non-disclosure.

Idem

(4) Where a report has been delivered to the Commission under subsection 3, the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of delivery of the initial report and every ten days thereafter until the material change is generally disclosed. *New.*

Trading where undisclosed change

75.—(1) No person or company shall,

(*a*) purchase or sell securities of a reporting issuer with the knowledge of a material fact or material change in the affairs of the reporting issuer that he or it knew or ought reasonably to have known had not been generally disclosed; or

(*b*) inform another person or company about such material fact or material change other than in the necessary course of business before it has been so disclosed.

Exception

(2) No purchaser or vendor shall be found to have contravened clause *a* of subsection 1 if such purchaser or vendor proves that he did not make use of knowledge of the material fact or material change in purchasing or selling the securities. *New.*

Interim financial statement

76.—(1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the three-month period that commenced on the date of incorporation, organization or continuation, as the case may be, and for each of the two subsequent three-month periods during its first financial year, if the reporting issuer has not completed a financial year; or

(*b*) for the three-month period of the current financial year that commenced immediately following the last financial year and for each of the two subsequent three-month periods during the current financial year, including a comparative statement for the corresponding three-month period in the last financial year, if the reporting issuer has completed a financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 130 (1), *amended*.

Idem

(2) Every reporting issuer that is a mutual fund in Ontario shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the six-month period that commenced on the date of incorporation, organization or continuation, if the reporting issuer has not completed a financial year; or

(*b*) for the six-month period that commenced immediately after the last financial year, if the reporting issuer has completed a financial year,

made up and certified by the regulations and in accordance with generally accepted accounting principles. *New*.

Comparative financial statements

77.—(1) Every reporting issuer that is not a mutual fund shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to,

(*a*) the period that commenced on the date of incorporation, organization or continuation, as the case may be, and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be; and

(*b*) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 120 (1), *amended*.

Annual financial statements

(2) Every reporting issuer that is a mutual fund in Ontario shall file annually within 140 days from the end of its last financial year financial statements relating to the period that commenced on the date of incorporation, organization or continuation and ended as of the close of its first financial year or, if the reporting issuer has completed a financial year, the last financial year made up and certified as required by the regulations and in accordance with generally accepted accounting principles. *New*.

(3) Every financial statement referred to in subsections 1 and 2 shall be accompanied by a report of the auditor of the reporting issuer prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 119 (2), *amended*. Auditor's report

(4) For the purposes of this Part, "auditor", where used in relation to the reporting issuer, includes the auditor of the reporting issuer and any other independent public accountant. *New*. "auditor" defined

78. The auditor of a reporting issuer shall make such examinations as will enable him to make the report required by subsection 3 of section 77. R.S.O. 1970, c. 426, s. 119 (1). Auditor's examination

79. Upon the application of a reporting issuer or upon the motion of the Commission, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose, Relief against certain requirement

(*a*) permitting the omission from the financial statements required to be filed under this Part of,

(i) comparative financial statements for particular periods of time,

(ii) sales or gross operating revenue where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the reporting issuer, or

(iii) basic earnings per share or fully diluted earnings per share;

(*b*) where, in the opinion of the Commission, the reporting issuer is unable to comply with the requirements of the regulations relating to the preparation of a statement of changes in financial position required under this Part and the regulations, permitting the reporting issuer to file in lieu thereof an alternative financial statement containing such information, if any, as the Commission considers appropriate;

(*c*) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Part or the regulations relating to a requirement of this Part,

(i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,

(ii) if the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its, or their, securities in a form, or at times, different from those required by this Part, or

(iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S.O. 1970, c. 426, s. 132 (1), *amended*.

Filing of information circular

80.—(1) Where the management of a reporting issuer is required to send an information circular under clause *a* of subsection 1 of section 85, the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations.

Idem

(2) In any case where subsection 1 is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations. *New*.

Filing of documents filed in another jurisdiction

81. Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued require the reporting issuer to file substantially the same information in that jurisdiction as is required by this Part, the reporting issuer may comply with the filing requirements of this Part by filing copies of the press release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. *New*.

Order relieving small reporting issuer

82. Upon the application of a reporting issuer that has fewer than fifteen security holders whose latest address as shown on the books of the reporting issuer is in Ontario, the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer shall be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. *New*.

PART XVIII

PROXIES AND PROXY SOLICITATION

Interpretation

83. In this Part,

(*a*) "information circular" means an information circular prepared in accordance with the regulations;

(*b*) "solicit" and "solicitation" include,

(i) any request for a proxy whether or not accompanied by or included in a form of proxy,

(ii) any request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,

(iv) the sending or delivery of a form of proxy to a security holder under section 84,

but do not include,

(v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or

(vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy. R.S.O. 1970, c. 426, s. 101 (*b*, *c*), *amended*.

Mandatory solicitation of proxies

84. Subject to section 87, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send by prepaid mail to each such security holder who is entitled to notice of meeting, at his latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S.O. 1970, c. 426, s. 102 (1), *amended*.

Information circular

85.—(1) Subject to subsection 2 and section 87, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless,

(*a*) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such security holder of the reporting issuer whose proxy is solicited at his latest address as shown on the books of the reporting issuer; or

(*b*) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited.

Application of subs. 1

(2) Subsection 1 does not apply to,

(*a*) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;

(*b*) any solicitation by a person or company made under section 48; or

(*c*) any solicitation by a person or company in respect of securities of which he is the beneficial owner. R.S.O. 1970, c. 426, s. 103 (1, 2), *amended*.

Voting where proxies

86. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his name to be voted unless,

(*a*) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or

(*b*) proxies requiring that the securities represented thereby be voted against what would otherwise be

the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S.O. 1970, c. 426, s. 106, *amended*.

Compliance with laws of other jurisdiction

87.—(1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this Part, the requirements of this Part do not apply.

Exemption by order

(2) Subject to subsection 1, upon the application of any interested person or company, the Commission may,

(*a*) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or

(*b*) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient exempting, in whole or in part, a person or company from the requirements of this Part and of section 80. *New*.

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

Interpretation

88.—(1) In this Part,

(*a*) "day" means a clear day and a period of days shall be deemed to commence the day following the event which began the period and shall be deemed to terminate on midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate on midnight of the day next following that is not a Sunday or holiday;

(*b*) "directors' circular" means a directors' circular prepared in accordance with the regulations;

(*c*) "issuer bid" means an offer made by an issuer to security holders the last address of any of whom

as shown on the books of the issuer is in Ontario to purchase, redeem or otherwise acquire any or all of a class of its securities, excluding securities described in paragraph 5 of subsection 2 of section 34;

(*d*) "market price", as to securities in which there is a published market, at any date, means a price determined, in accordance with the regulations, by reference to the price of such securities as established by trades on the published market, or such other price as may be determined by the Commission under section 99;

(*e*) "offeree" means a person or company to whom a take-over bid or an issuer bid is made and whose latest address as shown on the books of the offeree company is in Ontario;

(*f*) "offeree company" means a company or other issuer whose securities are the subject of a take-over bid;

(*g*) "offeror" means a person or company other than an agent, who makes a take-over bid or an issuer bid and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

then each of them shall be deemed to be an offeror if the offer made by any of them is a take-over bid;

(*h*) "offeror's presently-owned securities" means voting securities of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or associates of the offeror and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

includes the voting securities owned by all of such persons or companies and their associates;

(*i*) "published market", as to any class of securities, means a stock exchange recognized by the Commission for purposes of this Part on which such securities are listed, or any other market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation; and

(*j*) "take-over bid" means an offer made to security holders the last address of any of whom as shown on the books of the offeree company is in Ontario to purchase, directly or indirectly, such number of voting securities of a company that, together with the offeror's presently-owned securities, will in the aggregate exceed 20 per cent of the outstanding voting securities of the company. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted take-over bids

(2) A take-over bid is exempted from the requirements of this Part where,

(*a*) it is made through the facilities of a stock exchange recognized by the Commission for the purpose of this section according to the by-laws, regulations or policies of the stock exchange;

(*b*) it is an offer to purchase shares in a private company, provided that where the private company is an insider of a reporting issuer the offeror first gives the Commission written notice stating the names of the offerees, the terms and conditions and dates of the proposed purchases and either,

(i) the Commission has not informed the offeror in writing within ten days of the giving of the notice that it objects to the offer, or

(ii) the offeror has delivered to the Commission information relating to the offer that is satisfactory to and accepted by the Commission;

(*c*) it is an offer to purchase securities by way of agreements with fewer than fifteen security holders and not made pursuant to an offer to security holders generally, but

(i) where a person or company enters into an agreement to sell securities, if one or more

other persons or companies on whose behalf that person or company is acting as trustee, executor, administrator or other legal representatives, have a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of security holders with whom there have been agreements, and

(ii) if any person or company who enters into an agreement sells thereunder securities which, during the two years preceding the date of the agreement, he acquired with the intent that they should be sold under such agreement, then each person or company from whom those securities were acquired shall be included in the determination of the number of security holders with whom there have been agreements; or

(*d*) it involves the acquisition of not more than 5 per cent of the voting securities of the offeree company but the aggregate number of voting securities acquired by the offeror, his associates or affiliates, within any period of twelve consecutive months in reliance on the exemptions provided by this subsection, shall not exceed 5 per cent of the outstanding voting securities of the offeree company at the beginning of the period, and this clause does not apply to any purchase of voting securities in which there is a published market if that purchase is effected above the market price at the date of purchase plus reasonable brokerage fees or other commission. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted issuer bid

(3) An issuer bid is exempted from the requirements of this Part where,

(*a*) the securities are purchased, redeemed or retired in accordance with the terms and conditions agreed to at the time they were issued or subsequently varied by agreement with the security holders of that class including purchases made to meet sinking fund requirements, and the repurchase of securities from an employee of the issuer or an employee of an affiliate;

(*b*) the purchases are made in accordance with the requirements of the instrument creating or governing the class of securities;

(*c*) the issuer bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this Part according to the by-laws, regulations or policies of the stock exchange;

(*d*) following the publication of a notice of intention in the form and in the manner prescribed by the regulations, the issuer purchases by any method not more than 5 per cent in number or, in the case of debt securities, in principal amount, of the issued or outstanding securities of the class sought not held by or for the benefit of the issuer, in any consecutive thirty day period provided that the issuer has no present intention of purchasing additional securities of the class sought within the following twelve month period; or

(*e*) the issuer bid is made by a private company. *New.*

Requirements for take-over and issuer bids

89.—(1) The following provisions apply to every take-over bid and issuer bid:

1. The take-over bid or issuer bid shall be sent to all holders of the class of securities sought, and of securities convertible into, or carrying the right to purchase, securities of that class, whose last address on the records of the offeree company or issuer is in Ontario.

2. The period of time in which securities may be deposited pursuant to a take-over bid or an issuer bid shall not be less than twenty-one days from the date thereof.

3. Any securities deposited pursuant to a take-over bid or an issuer bid shall not be taken up and paid for by the offeror until the expiration of ten days from its date.

4. Any securities deposited pursuant to a take-over bid or an issuer bid may be withdrawn by an offeree at any time until the expiration of ten days from its date.

5. Notice of withdrawal of any securities pursuant to paragraph 4 shall be made in writing, including telegraphic communication, by the offeree or his agent and must be actually received by the depositary.

6. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are

owned by offerees, securities deposited pursuant thereto shall not be taken up and paid for by an offeror until the expiration of twenty-one days from its date.

7. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, the period of time within which securities may be deposited pursuant to the take-over bid or an issuer bid, or any extension thereof, shall not exceed thirty-five days from the date of the take-over bid or an issuer bid.

8. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, securities deposited pursuant to the take-over bid or an issuer bid shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day within which securities may be deposited thereto.

9. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken up by the offeror shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each offeree.

10. Where the offeror making a take-over bid intends to purchase securities in the market his intention shall be set out in the take-over bid circular and, where the take-over bid is made for less than all of the class of securities sought that are owned by offerees, the offeror shall not reduce the number of securities he is bound or willing to take up under paragraphs 8 and 9 by the number of securities purchased in the market.

11. In the case of a take-over bid, where the laws applicable to the company provide for a right of appraisal or acquisition, the offeror shall advise the offeree of his rights of appraisal and whether the offeror intends exercising any right of acquisition he may have.

12. The offeror shall not attach any conditions to the offer except, in the case of take-over bids, the right to withdraw the offer if,

(*a*) the offerees fail to tender the minimum number of securities the offeror is bound and willing to take up;

(*b*) any undisclosed action prior to the date of the offer, or any action subsequent to such date, of the offeree company or of the directors or senior officers of the offeree company or by a person or company other than the offeror, including a governmental or regulatory authority, that effects a material change in the affairs of the company; or

(*c*) the required approval of a governmental or regulatory authority is not obtained prior to the expiration of the offer.

13. Where the take-over bid or issuer bid is made for all of the class of securities sought that are owned by offerees, the offeror shall, at the expiration of thirty-five days from the making of the offer, take up and pay for the securities tendered at that time or, in the case of a take-over bid, abandon his offer.

14. Where the take-over bid is subject to the approval of a governmental or regulatory authority, the time within which the offeror is bound to take up and make payment for the securities under paragraphs 8 and 13 may be extended for a period not exceeding an additional sixty days. R.S.O. 1970, c. 426, s. 82; 1971, c. 31, s. 23, *amended*.

Sale by offeror prohibited

(2) The offeror shall not sell any of the class of the securities that are the subject of the take-over bid during the period of the take-over bid.

Offer increasing take-over bid or issuer bid

(3) Where, during the course of a take-over bid or an issuer bid, the offeror pays or agrees to pay a price for securities higher than the consideration offered through the take-over bid or issuer bid, the take-over bid or issuer bid shall be deemed to be varied by increasing the consideration to the higher price. *New*.

Notice of variation in take-over bid or issuer bid

90.—(1) Where a material change has occurred in the information contained in a take-over bid circular or issuer bid circular while the offer is still outstanding or where a take-

over bid or an issuer bid has been varied by changing any of its terms, every person or company whose shares have not been taken up and paid for and who has been sent the take-over bid circular or issuer bid circular shall be sent notice of the material change or variation and, except where a variation is solely an increase in price, the date of the take-over bid or issuer bid shall, for the purposes of section 89, be deemed to be the date of the material change or variation.

Idem

(2) A notice of variation shall advise the offeree of his rights under paragraph 4 of subsection 1 of section 89. *New.*

Variation of terms of take-over bid or issuer bid

(3) Where the terms of a take-over bid or an issuer bid are varied before the expiration thereof by increasing the consideration offered for the securities, the offeror shall pay such increased consideration to each offeree whose securities are taken up and paid for pursuant to the take-over bid or issuer bid, whether or not such securities have been taken up by the offeror before the variation of the take-over bid or issuer bid.

Idem

(4) Where a take-over bid for all the voting securities owned by offerees is converted, by amendments or otherwise, to a bid for less than all the voting securities owned by offerees, the take-over bid shall be deemed conclusively to be for less than all the voting securities owned by offerees. R.S.O. 1970, c. 426, s. 84, *amended.*

Exempt take-over bid, effect of published market

91.—(1) Where a take-over bid is effected without compliance with section 89 in reliance on the exemption in clause *c* of subsection 2 of section 88, if there is a published market in the class of securities acquired and the price paid for any of the securities acquired exceeds the market price at the date of the relevant agreement plus reasonable brokerage fees or other commissions, the offeror shall within 180 days after the date of the first of the agreements comprising the take-over bid, offer to purchase all of the additional securities of the same class owned by security holders, the last registered address of whom is in Ontario, at and for a consideration per security at least equal in value to the highest price paid under any such agreements, and that offer shall be a take-over bid for purposes of this Part.

Premium prohibited

(2) Subject to any decision of the Commission under section 99 all holders of the same class of securities shall be paid the same price and no collateral agreement with any part of such holders shall have the effect, directly or indirectly, of offering such holders a price greater than the

take-over bid price or issuer bid price for their securities. *New.*

Sending by mail

92. A take-over bid, a varied take-over bid, an issuer bid or a varied issuer bid shall be sent by prepaid mail to the offerees and shall be deemed conclusively to have been dated as of the date on which it was mailed. R.S.O. 1970, c. 426, s. 83, *amended.*

Consideration in cash

93. Where a take-over bid or an issuer bid provides that the consideration for the securities deposited pursuant thereto is to be paid in cash or partly in cash, the offeror shall make adequate arrangements to ensure that the required funds are available to effect payment in full for all securities owned by offerees that the offeror has offered to purchase pursuant to the take-over bid. R.S.O. 1970, c. 426, s. 85.

Take-over bid circular

94.—(1) A take-over bid circular shall form part of or accompany a take-over bid.

Content

(2) Every take-over bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.

Consideration in securities

(3) Where a take-over bid provides that the consideration for the securities of the offeree company is to be, in whole or in part, securities of an issuer, the take-over bid circular shall contain the additional information prescribed by the regulations. R.S.O. 1970, c. 426, s. 86, *amended.*

Issuer bid circular

95.—(1) An issuer bid circular shall form part of or accompany an issuer bid.

Contents

(2) Every issuer bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.

Consideration in securities

(3) Where an issuer bid provides that the consideration for the securities is to be, in whole or in part, other securities of the issuer the issuer bid circular shall contain the additional information prescribed by the regulations. *New.*

Directors' circular

96.—(1) The board of directors of an offeree company shall send a directors' circular to each offeree not later than seven days from the date of the take-over bid prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (1), *amended.*

Recommendation by board

(2) The board of directors may include in a directors' circular a recommendation to accept or to reject a take-over bid if it sees fit to do so. *New.*

Recommendation by individual director

(3) An individual director or officer may recommend to the offerees acceptance or rejection of the take-over bid made to such offerees if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (4), *amended.*

Advising of consideration

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending a director's circular, advise the offerees of this fact and shall advise them not to tender their securities until further communication is received from the directors. R.S.O. 1970, c. 426, s. 87 (2), *amended.*

Advising of decision of directors

(5) Where the board of directors sends a communication under subsection 4, it shall communicate the recommendation or the decision not to make a recommendation to the offerees at least seven days prior to the expiry of the offer. R.S.O. 1970, c. 426, s. 87 (3), *amended.*

Service

(6) All communications required or permitted by this section shall be sent to each offeree by prepaid mail to his latest address as shown on the books of the offeree company. R.S.O. 1970, c. 426, s. 87 (5).

Circulation of recommendation of individual director

(7) Where an individual director or officer submits a recommendation prepared in accordance with subsection 3 to the board of directors prior to the board of directors sending the directors' circular required by subsection 1, or the further communication permitted by subsection 5, the board of directors shall send a copy of the recommendation of the individual director or officer to the offerees together with the circular or further communication. *New.*

Approval of circulars

97.—(1) Where a take-over bid is made by or on behalf of an issuer, the contents of the take-over bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 89 (1), *amended.*

Idem

(2) Where a take-over bid is made by or on behalf of an issuer, the take-over bid circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 93.

(3) The contents of a directors' circular shall be approved and the delivery thereof authorized by the directors of the offeree company. R.S.O. 1970, c. 426, s. 89 (2), *amended*. Idem

98. The issuer bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. *New*. Idem

99. Upon an application by an interested person or company, the Commission may, subject to such terms and conditions as it may impose, Deeming offers exempt

(*a*) decide that an offeror shall not be obligated to comply with subsection 1 of section 91 where the Commission finds that the offeror will not or did not acquire through the offer the power or authority to control the business or affairs of the offeree company;

(*b*) determine the market price of securities of any class at any date, such determination to be based on a finding by the Commission as to the price at which a holder of securities of that class could reasonably have expected to dispose of his securities immediately prior to the relevant date excluding any change in price reasonably attributable to the anticipated take-over bid;

(*c*) decide for purposes of section 91 that a consideration proposed to be offered by an offeror is, or is not, at least equal in value to the highest price paid under the relevant agreements;

(*d*) decide for the purpose of section 91 that a collateral agreement or arrangement with a selling security holder is made for reasons other than to increase the price paid to him for his securities and may be entered into notwithstanding that section; and

(*e*) exempt any person or company from any requirements of this Part where in its opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 90, *amended*.

100. The identity of the offeror shall be disclosed in a take-over bid circular. 1971, c. 31, s. 27, *amended*. Naming of offeror

PART XX

INSIDER TRADING AND SELF-DEALING

Interpretation

101.—(1) In this Part,

(*a*) "mutual fund" means a mutual fund that is a reporting issuer;

(*b*) "related mutual funds" includes more than one mutual fund under common management;

(*c*) "related person or company" in relation to a mutual fund means a person in whom, or a company in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of this Part from making any investment.

Idem

(2) For the purpose of this Part,

(*a*) any issuer in which a mutual fund holds in excess of 10 per cent of the voting securities or in which the mutual fund and related mutual funds hold in excess of 20 per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds;

(*b*) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other transferable option relates; and

(*c*) for the purpose of reporting under section 102 or 103, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent. R.S.O. 1970, c. 426, s. 109, *amended*.

Report

102.—(1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

Idem

(2) A person or company who has filed or is required to file a report under this section or any predecessor thereof and whose direct or indirect beneficial ownership

of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, if he was an insider of the reporting issuer at any time during such month, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during said month giving such details of each transaction as may be required by the regulations. R.S.O. 1970, c. 426, s. 110 (1, 2), *amended*.

Idem

(3) A person or company who becomes an insider of a reporting issuer by reason of subsection 8 or 9 of section 1 shall file the reports required by subsections 1 and 2 of this section for the previous six months or such shorter period that he was a director or officer of the reporting issuer within ten days after the end of the month that the issuer became an insider of a reporting issuer or the reporting issuer became an insider of another reporting issuer as the case may be. *New*.

Report of offeror

103.—(1) Where a person or company becomes the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding, through purchases effected through a take-over bid or issuer bid exempted from the requirements of Part XIX by subsection 2 or subsection 3 of section 88, such person or company shall file a report as of the day on which he acquired the ownership within three days of acquiring such 20 per cent ownership.

Idem

(2) A person or company who is the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding shall, within three days of purchasing further voting securities carrying an additional 5 per cent of the voting rights, file a report as of the day on which he acquired an additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

Idem

(3) Where the facts required to be reported by this section are identical to those required under section 102, a separate report under section 102 is not required. 1971, c. 31, s. 33, *amended*.

Report of transfer by insider

104. No insider of a reporting issuer shall transfer or cause to be transferred any securities of the reporting issuer into the name of an agent, nominee or custodian without delivering to the Commission a report of such transfer in accordance with the regulations except for a transfer for the purpose of giving collateral for a *bona fide* debt. *New.*

Report of transfer by insider

105. Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows or ought reasonably to know that they are beneficially owned by an insider he shall file a report in accordance with the regulations except where the transfer was for the purpose of giving collateral for a *bona fide* debt or the insider has reported and remains the beneficial owner of the securities. *New.*

Interpretation

106. For the purposes of sections 107, 108, 109, 110 and 111,

(*a*) "investment" means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company;

(*b*) a person or company or a group of persons or companies has a significant interest in an issuer, if,

(i) in the case of a person or company, he or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or

(ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the outstanding shares or units of the issuer;

(*c*) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either in-

dividually or together or directly or indirectly, voting securities to which are attached more than 20 per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by him as underwriter in a distribution of such securities but such exclusion ceases to have effect on completion or cessation of the distribution by him;

(*d*) where a person or company or group of persons or companies owns beneficially, directly or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. *New.*

Loans of mutual funds

107.—(1) No mutual fund shall knowingly make an investment by way of loan to,

(*a*) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;

(*b*) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.

Loans of management or distribution companies

(2) No management company or distribution company of a mutual fund shall knowingly make an investment by way of loan to,

(*a*) any officer or director of the mutual fund or an associate of any of them; or

(*b*) any individual, where the individual or associate of the individual is a substantial security holder of the mutual fund.

Investments of mutual funds, etc.

(3) No mutual fund, its management company or distribution company shall knowingly make an investment,

(*a*) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

(*b*) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or

(*c*) in an issuer in which,

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

Divesting of prohibited loans and investments

(4) No mutual fund or its management company or its distribution company shall knowingly hold an investment made after the coming into force of this Act that is an investment described in this section. *New.*

Indirect investment

108. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 107 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 107 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. *New.*

Relieving orders

109. Upon an application of an interested person or company, the Commission may, where it is satisfied,

(*a*) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or

(*b*) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that section 107 or 108 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. *New.*

Exception to s. 106 (*d*)

110. Notwithstanding clause *d* of section 106, a mutual fund, its management company or its distribution company is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. *New.*

Fees on investment

111.—(1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director.

Relieving orders

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to the mutual fund. *New.*

Standard of care for management of mutual fund

112.—(1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Idem

(2) For the purposes of subsection 1, a person or company is responsible for the management of a mutual fund if he has legal power or right to control the mutual fund or if in fact he is able to do so. *New.*

Filing by management companies

113.—(1) Every management company shall file a report prepared in accordance with the regulations of,

(*a*) every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(*b*) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;

(*c*) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and

(*d*) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs.

Relieving orders

(2) The Commission may, upon the application of the management company of a mutual fund and where it is of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to any transaction or class of transactions. *New.*

"responsible person" defined

114.—(1) In this section, "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

Interest of manager in investment portfolio

(2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to,

(*a*) invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase;

(*b*) purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager; or

(*c*) make a loan to a responsible person or an associate of a responsible person or the portfolio manager. *New*.

Trades by mutual fund insiders

115. No person or company who has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by a portfolio manager shall purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for a client by a portfolio manager include securities of that issuer and where the information is used by the person or company for his or its direct benefit or advantage. *New*.

Publication of summaries of reports

116. The Commission shall summarize in or as a part of a monthly periodical available to the public on payment of a reasonable fee the information contained in every report filed in compliance with this Part. R.S.O. 1970, c. 426, s. 111 (2).

Filing in other jurisdiction

117.—(1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Part, the filing requirements of this Part may be complied with by filing the reports required by the laws of such jurisdiction manually signed or certified in accordance with the regulations. *New*.

Exemptions by order of Commission

(2) Subject to subsection 1, the Commission may,

(*a*) upon the application of an interested person or company,

(i) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or

(ii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing; or

(*b*) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company, class of persons or companies or class of transactions from the requirements of this Part. R.S.O. 1970, c. 426, s. 116 (1), *amended*.

PART XXI

ENFORCEMENT

Offences, general

118.—(1) Every person or company who,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year. R.S.O. 1970, c. 426, s. 137 (1-3), *amended*.

Consent of Minister

119. No proceedings under section 118 shall be instituted except with the consent or under the direction of the Minister. R.S.O. 1970, c. 426, s. 138 (1).

Information containing more than one offence

120. An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1970, c. 426, s. 139.

Execution of warrant issued in another province

121.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisidction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof. R.S.O. 1970, c. 426, s. 149.

Order for compliance

122.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court for an order,

(*a*) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and

(*b*) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and upon the application the judge may make such order, or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1. R.S.O. 1970, c. 426, s. 143, *amended*.

Order to cease trading

123.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of any securities for such period as is specified in the order. R.S.O. 1970, c. 426, s. 144 (1).

Idem

(2) The Commission may issue a cease trading order under subsection 1 notwithstanding the delivery of a report to it pursuant to subsection 3 of section 74. *New*.

Temporary order

(3) No order shall be made under subsection 1 or 2 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, which shall not be for longer than fifteen days from the date of the making thereof, but the order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period. R.S.O. 1970, c. 426, s. 144 (2), *amended*.

Commission's discretion to remove exemptions

124.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that any or all of the exemptions contained in sections 34, 71 and 72 do not apply to the person or company named in the order.

Temporary order and hearing

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall not be for longer than fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded.

Notice

(3) Notice of a temporary order made under subsection 2 shall be given forthwith together with the notice of the

hearing under subsection 2 to every person or company who in the opinion of the Commission is directly affected thereby. R.S.O. 1970, c. 426, s. 19 (5-7), *amended*.

Limitation period

125.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission. R.S.O. 1970, c. 426, s. 138 (2, 3), *amended*.

PART XXII

CIVIL LIABILITY

Liability for misrepresentation in prospectus

126.—(1) Where, at the time of purchase, a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution or distribution to the public shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to section 128, a right of action for damages against,

(*a*) the issuer or selling security holder;

(*b*) each underwriter of the securities who is required to sign the certificate required by section 58;

(*c*) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(*d*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to statements or reports that have been made by them; and

(*e*) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses *a* to *d*,

and where the purchaser purchased the security from a person or company referred to in clause *a* or *b* he also has a right of rescission against such person or company.

Defence

(2) No person or company is liable under subsection 1 if he proves that the purchaser purchased the securities with knowledge of the misrepresentation.

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection 1 if he proves,

(*a*) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forthwith gave reasonable general notice that it was so filed;

(*b*) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(*c*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of an extract of a report or evaluation of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the statement of the expert or was not a fair copy of the extract from the report or evaluation of the expert; or

(*d*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of an extract from his own report or evaluation as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his statement as an expert or was a fair copy of or extract from his report or evaluation as an expert, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his statement

as an expert or was not a fair copy of or extract from his report or evaluation as an expert he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus.

Idem

(4) No person or company, other than the issuer or selling security holder, is liable under subsection 1 if, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of an extract from his own report or evaluation as an expert, he had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

Idem

(5) No person or company, other than the issuer, is liable under subsection 1 if he proves that, with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of an extract of a report or evaluation of an expert, he had, after reasonable investigation, reasonable grounds to believe and did believe that there was no misrepresentation.

Limitation re underwriters

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him.

Limitation in action for damages

(7) In an action for damages pursuant to subsection 1, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection 1 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

Limitation re amount recoverable

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

No derogation of rights

(10) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1970, c. 426, s. 142, *amended*.

Liability for misrepresentation in circular

127.—(1) Where a take-over bid circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall, subject to section 128, be deemed to have relied on such misrepresentation and has a right of action for rescission or damages against the offeror, and a right of action for damages against,

(*a*) every person who at the time the circular was signed was a director of the offeror;

(*b*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to statements or reports that have been made by them; and

(*c*) each person who signed a certificate in the circular other than the persons included in clause *a*.

Idem

(2) Where a directors' circular or a director's or officer's circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall, subject to section 128, be deemed to have relied on such misrepresentation and has a right of action for damages against every director or officer who signed the circular.

Idem

(3) The provisions of subsection 1 apply *mutatis mutandis* where an issuer bid circular contains a misrepresentation.

Defence

(4) No person or company is liable under subsection 1, 2 or 3 if he proves that the offeree had knowledge of the misrepresentation.

Idem

(5) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 if he proves,

(*a*) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;

(*b*) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or director's

or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;

(*c*) that, with respect to every misrepresentation, he had, after reasonable investigation, reasonable grounds to believe and did believe the statement was true and that there was no omission to state a material fact;

(*d*) that, with respect to any part of the circular purporting to be a copy of an extract from a report, opinion, or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion, or statement of the expert or was not a fair copy of an extract from the report, opinion or statement of the expert; or

(*e*) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert or was a fair copy of or extract from his report, opinion or statement, or

(ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert or was not a fair copy of or extract from his report, opinion or statement as an expert he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular.

Idem

(6) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 if, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of an extract from his own report, opinion or statement as an expert, he had,

after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

No derogation of rights

(7) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the offeree may have at law. 1971, c. 31, ss. 29, 45, *amended*.

Proof of reliance on misrepresentation required

128. If the purchaser under subsection 1 of section 126 or the offeree under subsection 1 or 2 of section 127 acquired the security or accepted the offer after the issuer or offeror, as the case may be, had made generally available to its security holders comparative financial statements covering a period of at least twelve months beginning after the date a receipt is obtained from the Director for the prospectus or the date of the take-over bid or issuer bid then the right of recovery under section 126 or 127 shall be conditional upon proof that the purchaser or offeree purchased the securities or accepted the offer relying on the misrepresentation in the prospectus, any amendment to the prospectus, the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, but such reliance may be established without proof of the reading of the prospectus, any amendment to the prospectus, the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular. *New*.

Standard of reasonableness

129. In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of subsection 5 of section 126 and clause *c* of subsection 5 of section 127, the standard of reasonableness shall be that required of a prudent man in the circumstances of the particular case. *New*.

Liability for unlawful trade

130.—(1) A person or company who trades in a security in violation of section 52 or 70, subsection 4, 5 or 7 of section 71 or section 94 is liable to his purchaser or offeree for rescission or damages. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

Idem

(2) An offeror who fails to make the offer to purchase required to be made by subsection 1 of section 91, or to take up securities duly deposited under the offer, shall be liable to pay to the security holders entitled to receive the offer to purchase, or whose duly deposited securities were not taken up, a consideration per security equal in value to the minimum consideration at which the offer is required by that subsection to be made together with damages. *New*.

Interpretation

131. For the purposes of sections 132 and 133, "mutual fund" has the same meaning as in Part XX. *New*.

132.—(1) Every person or company who sells or purchases the securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person who informs the vendor or purchaser of the material fact or material change other than in the necessary course of business and every person who directly or indirectly provides the information is liable to compensate the purchaser or vendor of the securities for damages as a result of the trade unless, Liability where material fact or change undisclosed

(*a*) the person or company had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(*b*) the material fact or material change was known or ought reasonably to have been known to the purchaser or vendor; or

(*c*) the person or company proves that he did not make use of knowledge of the material fact or material change in purchasing or selling the securities.

(2) Any person or company who has access to information concerning the investment program of a mutual fund that is a mutual fund in Ontario or the investment portfolio managed for a client by a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by a portfolio manager include securities of that issuer is accountable to the mutual fund or the client of the portfolio manager, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale. Idem

(3) Every person or company referred to in subsection 1 who is also an insider of the reporting issuer, or who is an associate or affiliate of such insider, is, in addition to the liability imposed by subsection 1, accountable to the reporting issuer for any benefit or advantage received or receivable by the insider or associate or affiliate, as the case may be. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*. Accountability for gain

(4) The liability of the vendor or purchaser and any informer under subsection 1 is joint and several. Liability joint and several

(5) The measure of damages under subsection 1 is, Measure of damages

(*a*) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; and

(*b*) if the plaintiff is a vendor, the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the price that he received for the security.

Action by Commission on behalf of issuer

133.—(1) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection 1 of section 132 or is at the time of the application a security holder of the reporting issuer, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection 3 of section 132; and

(*b*) either,

(i) the reporting issuer has refused or failed to commence an action under section 132 within sixty days after receipt of a written request from the Commission or such person or company so to do, or

(ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 132,

make an order, upon such terms as to security for costs and otherwise as to the Judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection 3 of section 132.

Action by Commission on behalf of mutual fund

(2) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection 2 of section 132 or is at the time of the application a security holder of the mutual fund, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the mutual

fund has a cause of action under subsection 2 of section 132; and

(*b*) the mutual fund has either,

(i) refused or failed to commence an action under subsection 2 of section 132 within sixty days after receipt of a written request from the Commission or the person or company so to do, or

(ii) failed to prosecute diligently an action commenced by it under subsection 2 of section 132,

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 2 of section 132.

Costs

(3) Where an action under subsection 2 or 3 of section 132 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a board of directors of a reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Action by Commission on behalf of security holder of the reporting issuer

(4) Where an action under subsection 2 or 3 of section 132 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or a judge of the High Court

may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that,

(*d*) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and

(*e*) the continuance of the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Idem

(5) Where an action under subsection 2 or 3 of section 132 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by the Commission, the trial judge or a judge of the High Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

Idem

(6) In determining whether an action or its continuance is *prima facie* in the best interests of a reporting issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action.

Notice of application

(7) Notice of every application under subsection 1 or 2 shall be given to the Commission, the reporting issuer, and the mutual fund, as the case may be, and each of them may appear and be heard thereon.

Order to co-operate

(8) Every order made under subsection 1 or 2 requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or

mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action.

(9) An appeal lies to the Supreme Court from any order made under this section. *New.* Appeal

134.—(1) If subsection 1 of section 38 applies to a contract and such subsection is not complied with, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased. Rescission of contract

(2) If clause *c* of subsection 1 of section 35 applies to a contract and a registered dealer has failed to comply with such subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract. R.S.O. 1970, c. 426, s. 71 (1, 2), *amended.* Idem

(3) For the purpose of subsection 2, a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail. *New.* Service

(4) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 35 or 38 is upon the registered dealer. Onus

(5) No action respecting a rescission shall be commenced under this section after the expiration of a period of ninety days from the date of the mailing or delivering the notice under subsection 1 or 2. R.S.O. 1970, c. 426, s. 71 (3, 4), *amended.* Limitation period

135.—(1) Every purchaser of a security of a mutual fund in Ontario may, where the amount of the purchase does not exceed the sum of $50,000, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a con- Rescission of purchase of mutual fund security

tractual plan but, subject to subsection 5, the amount the purchaser is entitled to recover on exercise of this right to rescind shall not exceed the net asset value of the securities purchased, at the time the right is exercised.

Idem

(2) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection 1 for rescinding a purchase made under a contractual plan.

Notice

(3) The notice mentioned in subsection 1 shall be in writing, and may be given by prepaid mail, telegram or other means.

Service

(4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Reimbursement

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of rescission was given. *New.*

Limitation period for actions

136.—(1) Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than three years after the date of the transaction that gave rise to the liability.

Idem

(2) Subject to subsection 1, no action for rescission or damages created by section 126 or 127 shall be commenced more than 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action. *New.*

PART XXIII

GENERAL PROVISIONS

Admissibility in evidence of certified statements

137. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 426, s. 148, *amended*.

Filing and inspection of material

138. Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall be made available by the Commission for public inspection during the normal business hours of the Commission. *New*.

Immunity of Commission and officers

139.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power. R.S.O. 1970, c. 426, s. 145 (1), *amended*.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission done or omitted in compliance or intended compliance with any requirement, order or direction made or given under this Act or the regulations. *New*.

Regulations

140. The Lieutenant Governor in Council may make regulations,

1. prescribing categories for persons and companies and the manner of allocating persons and companies to categories, and prescribing the form and content of prospectuses, preliminary prospectuses, *pro forma* prospectuses and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;

2. designating mutual funds or a class or classes thereof as private mutual funds;

3. prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;

4. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

5. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as,

    i. investment dealer, unless he is a member of the Ontario District of the Investment Dealers' Association of Canada,

    ii. broker, unless he is a member of a stock exchange in Ontario recognized by the Commission,

    iii. broker-dealer, unless he is a member of the Broker-Dealers' Association of Ontario;

6. regulating the listing and trading of securities and records relating thereto;

7. governing the furnishing of information to the public or to the Commission by a registrant in connection with securities or trades therein;

8. regulating the trading of securities other than on a stock exchange recognized by the Commission;

9. governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;

10. respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

11. respecting sales charges imposed by a distribution company or contractural plan service company

under a contractural plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salesmen of shares or units of a mutual fund;

12. designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;

13. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;

14. prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

15. prescribing the practice and procedure of investigations under sections 11 and 13;

16. prescribing the forms for use under this Act and the regulations;

17. prescribing trades or securities, in addition to the trades and securities referred to in section 34, in respect of which registration shall not be required;

18. prescribing trades or securities, referred to in section 34 in respect of which there shall cease to be exemption from registration;

19. prescribing trades or securities, in addition to the trades and securities referred to in sections 71 and 72, in respect of which section 52 does not apply;

20. prescribing trades or securities in respect of which sections 52 and 61 shall be applicable notwithstanding sections 71 and 72;

21. prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

22. prescribing the practice and procedure by which the Commission recognizes exempt purchasers under paragraph 4 of subsection 1 of section 34;

23. exempting any category of registered advisers from the provisions of section 39 or varying the provisions of section 39, as they apply to any category of registered advisers;

24. prescribing the information required or permitted to be distributed under subsection 2 of section 64;

25. respecting the matters referred to in clause *h* of subsection 2 of section 60, and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;

26. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;

27. prescribing the form and content of the reports to be filed under Part XX;

28. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Part XX;

29. prescribing the form and content of a take-over bid circular, issuer bid circular, directors' circular and a director's or officer's circular required by Part XIX;

30. prescribing a penalty for the early redemption of shares or units of a mutual fund;

31. prescribing the form and content of proxies, information circulars and reports required by Parts XVII and XVIII;

32. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company. R.S.O. 1970, c. 426, s. 147; 1971, c. 31, s. 46, *amended*.

Commission's discretion to revoke or vary its decision

141. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations. *New.*

Continuation of registration

142. Every registration made and receipt for a prospectus issued under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970 and in effect immediately before this Act comes into force, continues in the same manner as if made or issued under this Act. *New.*

Repeals

143. The following are repealed:

1. *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970.

2. *The Securities Amendment Act, 1971*, being chapter 31.

3. *The Securities Amendment Act, 1973*, being chapter 11.

4. Section 55 of *The Government Reorganization Act, 1972*, being chapter 1.

Commencement

144.—(1) This Act, except clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71 come into force on the day eighteen months after the coming into force of this Act, and, until that date, the exemptions set out in clauses *a*, *b*, *c*, *d*, *l* and *p* of subsection 1 of the said section 71 are available only where each purchaser takes the securities for investment only and not with a view to resale, distribution or distribution to the public.

Short title

145. The short title of this Act is *The Securities Act, 1978*.

An Act to revise The Securities Act

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

(*Government Bill*)

1978

Government Publications

BILL 7 **Government Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Securities Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

JUN 1 0 1978

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Explanatory Note

The Bill is a revision of *The Securities Act*.

The purpose of the revision is to:

(*a*) implement those recommendations of The Report of The Canadian Committee on Mutual Funds and Investment Contracts concerning financial reporting by mutual funds, insider trading and liability, a standard of care for mutual fund managers and self-dealing investments.

(*b*) establish a system providing continuous disclosure of material information on the affairs of reporting issuers which, in turn, following an 18 month transitional period during which an information base will be established and the concept of "distribution to the public" retained, will permit a more exhaustive and objective definition of when securities may be traded without restriction;

(*c*) withdraw the exemption for take-overs to be effected in the over-the-counter market while continuing the exemptions for take-overs through the facilities of a recognized stock exchange, bids for the shares of private companies and private agreements and introducing a *de minimus* exemption for acquisitions of up to 5 per cent of the shares of an issuer in any twelve month period;

(*d*) require, where control of a company or other issuer is acquired through a take-over bid effected under the private agreement exemption at a premium over "market price", that the offeror make the same premium available to minority shareholders in Ontario and in "uniform act provinces";

(*e*) require, where an issuer makes an offer to purchase its own securities, disclosure similar to that called for on take-over bids;

(*f*) expand insider liability from insiders and their associates to include "tippees", i.e., anyone in a special relationship to a reporting issuer trading securities with knowledge of a material fact or change in respect of the issuer that has not been generally disclosed, to make the informing, or "tipping", of a material fact or change by a person in a special relationship to a reporting issuer an offence and by parallel amendment remove insider reporting and liability from *The Business Corporations Act*;

(*g*) require financial institutions, i.e., banks, loan and trust companies and insurance companies, to obtain registration where, as either principal or agent, they trade in securities with the public while continuing the exemption from registration as dealer where banks and trust companies transmit unsolicited orders for execution through a registrant and the exemption of banks from registration as underwritier with respect to government and municipal securities;

(*h*) require that financial institutions be subject to the continuous disclosure and insider reporting provisions of the legislation;

(*i*) remove matters such as proxy solicitation generally regarded as corporate law from *The Securities Act* and, at the same time, by parallel amendments to *The Business Corporations Act* consolidate investor disclosure in *The Securities Act*;

(*j*) amend some existing provisions of securities legislation in an effort to effectively achieve their purpose; and

(*k*) reorganize *The Securities Act* into a more logical format leaving fundamental principles in the Act and the detailed implementation to the regulation making powers.

BILL 7 **1978**

An Act to revise The Securities Act

HER MAJESTY, by and with advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act, Interpretation

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;
2. "associate", where used to indicate a relationship with any person or company means,
    i. any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
    ii. any partner of that person or company,
    iii. any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
    iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person;
3. "Commission" means the Ontario Securities Commission;
4. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

5. "contract" includes a trust agreement, declaration of trust or other similar instrument;

6. "contractual plan" means any contract or other arrangement for the purchase of shares or units of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

7. "dealer" means a person or company who trades in securities in the capacity of principal or agent;

8. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

9. "Director" means the Director or any Deputy Director of the Commission;

10. "director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

11. "distribution", where used in relation to trading in securities, means,

    i. a trade in securities of an issuer that have not been previously issued,

    ii. a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

    iii. a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20 per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

iv. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this Act if those securities continue on the day this Act comes into force to be owned by or for that underwriter, so acting,

v. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the coming into force of this Act, if the trade takes place during that eighteen months,

and after the coming into force of subsections 4, 5, 6 and 7 of section 71, includes a distribution as therein referred to, and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and "distribute", "distributed" and "distributing" have a corresponding meaning;

12. "distribution company" means a person or company distributing securities under a distribution contract;

13. "distribution contract" means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund;

14. "distribution to the public", where used in relation to trading in securities, means a distribution that is made for the purpose of distributing to the public securities issued by an issuer, whether such trades are made directly or indirectly to the public through an underwriter or otherwise;

15. "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy;

16. "individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organiza-

tion, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative;

17. "insider" or "insider of a reporting issuer" means,

    i. every director or senior officer of a reporting issuer,

    ii. every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,

    iii. any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than 10 per cent of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and

    iv. a reporting issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

18. "issuer" means a person or company who has outstanding, issues or proposes to issue, a security;

19. "management company" means a person or company who provides investment advice, under a management contract;

20. "management contract" means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration;

21. "material change" where used in relation to the affairs of an issuer means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

22. "material fact" where used in relation to securities issued or proposed to be issued means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities;

23. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

24. "misrepresentation" means,

    i. an untrue statement of material fact, or

    ii. an omission to state a material fact;

25. "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

26. "mutual fund in Ontario" means a mutual fund that is a reporting issuer or that is organized under the laws of Ontario, but does not include a private mutual fund;

27. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

28. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

29. "portfolio manager" means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;

30. "portfolio securities", where used in relation to a mutual fund, means securities held or proposed to be purchased by the mutual fund;

31. "private company" means a company in whose constating document,

    i. the right to transfer its shares is restricted,

    ii. the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be, shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and

    iii. any invitation to the public to subscribe for its securities is prohibited;

32. "private mutual fund" means a mutual fund that is,

    i. operated as an investment club, where,

        (*a*) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public;

        (*b*) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees; and

        (*c*) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations, or

    ii. administered by a trust company registered under *The Loan and Trust Corporations Act* and consists of,

R.S.C. 1952, c. 148

        (*a*) a pooled fund maintained solely to serve registered retirement savings plans, registered home ownership savings plans, or other savings plans registered under the *Income Tax Act* (Canada);

R.S.O. 1970, c. 254

        (*b*) a common trust fund as defined by subsection 1 of section 85 of *The Loan and Trust Corporations Act*; or

(*c*) a pooled fund maintained by a trust company in which moneys belonging to various estates and trusts in its care are commingled, with the authority of the settlor, testator or trustee thereof, for the purpose of facilitating investment where no general solicitations are made with a view to the sale of participations in the pooled fund;

33. "promoter" means,

i. a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

ii. a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

34. "proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;

35. "register" means register under this Act, and "registered" has a corresponding meaning;

36. "registrant" means a person or company registered or required to be registered under this Act;

37. "regulations" means the regulations made under this Act;

38. "reporting issuer" means an issuer,

i. that has issued voting securities on or after the 1st day of May, 1967 in respect of which a prospectus was filed and a receipt therefor obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,

ii. that has filed a prospectus and obtained a receipt therefor under this Act or that has filed a securities exchange take-over bid circular under this Act,

iii. any of whose securities have been at any time since the coming into force of this Act listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

R.S.O. 1970, c. 53

iv. to which *The Business Corporations Act* applies and which, for the purposes of that Act, is offering its securities to the public, or

v. that is the company whose existence continues following the exchange of securities of a company by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(*a*) a statutory amalgamation or arrangement; or

(*b*) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,

where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months;

39. "salesman" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

40. "security" includes,

i. any document, instrument or writing commonly known as a security,

ii. any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,

iii. any document constituting evidence of an interest in an association of legatees or heirs,

iv. any document constituting evidence of an option, subscription or other interest in or to a security,

v. any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than a contract of insurance issued by an insurance company licensed under *The Insurance Act* and an evidence of deposit issued by a bank to which the *Bank Act* (Canada) applies or by a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, cc. 224, 254 R.S.C. 1970, c. B-1

vi. any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under *The Insurance Act* which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,

vii. any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,

viii. any certificate of share or interest in a trust, estate or association,

ix. any profit-sharing agreement or certificate,

x. any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

xi. any oil or natural gas royalties or leases or fractional or other interest therein,

xii. any collateral trust certificate,

xiii. any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*,

R.S.O. 1970, c. 226

xiv. any investment contract, other than an investment contract within the meaning of *The Investment Contracts Act*,

xv. any document constituting evidence of an interest in a scholarship or educational plan or trust, and

xvi. any commodity futures contract or any commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under *The Commodity Futures Act, 1978* or the form of which is not accepted by the Director under that Act,

1978, c. ...

whether any of the foregoing relate to an issuer or proposed issuer;

41. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of an issuer, including any individual referred to in subparagraph i;

42. "trade" or "trading" includes,

i. any sale or disposition of a security for valuable consideration, whether the terms of

payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subparagraph iv, a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt,

ii. any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,

iii. any receipt by a registrant of an order to buy or sell a security,

iv. any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subparagraph iii of paragraph 11 for the purpose of giving collateral for a *bona fide* debt, and

v. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

43. "underwriter" means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

i. a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,

ii. a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

iii. a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

iv. a bank to which the *Bank Act* (Canada) applies with respect to the securities described in paragraph 1 of subsection 2 of section 34 and to such banking transactions as are designated by the regulations; R.S.C. 1970, c. B-1

44. "voting security" means any security other than a debt security of an issuer carrying a voting right

either under all circumstances or under some circumstances that have occurred and are continuing.

Affiliated companies

(2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.

Controlled companies

(3) A company shall be deemed to be controlled by another person or company or by two or more companies if,

(*a*) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and

(*b*) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Subsidiary companies

(4) A company shall be deemed to be a subsidiary of another company if,

(*a*) it is controlled by,

(i) that other, or

(ii) that other and one or more companies each of which is controlled by that other, or

(iii) two or more companies each of which is controlled by that other; or

(*b*) it is a subsidiary of a company that is that other's subsidiary.

Beneficial ownership of securities

(5) A person shall be deemed to own beneficially securities beneficially owned by a company controlled by him or by an affiliate of such company.

Idem

(6) A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

Insider of mutual fund

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company or distribution company shall be deemed to be an insider of the mutual fund.

Issuer as insider of reporting issuer

(8) Where an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the reporting issuer for the pre-

vious six months or for such shorter period that he was a director or senior officer of the issuer.

Reporting issuer as insider of other reporting issuer

(9) Where a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer shall be deemed to have been an insider of the first-mentioned reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the second-mentioned reporting issuer. R.S.O. 1970, c. 426, s. 1, *amended*.

PART I

THE COMMISSION

Commission

2.—(1) The Commission is continued and is responsible for the administration of this Act.

Appointment

(2) The Commission shall be composed of a Chairman and not more than eight other members, appointed by the Lieutenant Governor in Council, one of whom shall be designated as Vice-Chairman.

Quorum

(3) Two members of the Commission constitute a quorum. R.S.O. 1970, c. 426, s. 2, *amended*.

Chairman and members

3.—(1) The Chairman shall be the chief executive officer of the Commission and shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Commission.

Delegation of powers

(2) The Chairman, Vice-Chairman or any member of the Commission may exercise the powers and shall perform such duties vested in or imposed upon the Commission by this Act or the regulations as are assigned to him by the Commission.

Eligibility to sit on hearing

(3) Where the person who exercises the powers and performs the duties vested in the Commission by sections 11 to 17 pursuant to an assignment under subsection 2, receives the report of an investigation ordered under section 11 and on the basis of such report issues an *ex parte* order or a direction that proceedings be instituted by the Commission under section 26, 69, 123 or 124 such person shall not sit on the hearing required to be held by the Commission except with the written consent of the party directly affected by the proceedings.

Review

(4) Every decision made pursuant to an assignment under subsection 2 is subject to review by the Commission under

section 8 in the same manner as if it had been made by the Director, and the person who made the decision shall not sit on the hearing and review thereof by the Commission. R.S.O. 1970, c. 426, s. 3, *amended*.

PART II

FINANCIAL DISCLOSURE ADVISORY BOARD

Financial Disclosure Advisory Board

4.—(1) The Financial Disclosure Advisory Board established under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970, is continued and shall be composed of not more than five members appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Financial Disclosure Advisory Board shall meet at the call of the Commission.

Duties

(3) The Financial Disclosure Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning the financial disclosure requirements of this Act and the regulations.

Remuneration

(4) The members of The Financial Disclosure Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board. R.S.O. 1970, c. 426, s. 146, *amended*.

PART III

APPOINTMENT OF EXPERTS

Appointment of experts

5.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and

things as is vested in the Commission, and subsections 3 and 4 of section 11 apply *mutatis mutandis*.

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine. R.S.O. 1970, c. 426, s. 13. Payment of experts

PART IV

THE DIRECTOR

6. The Director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission except those referred to in section 8 and sections 11 to 17 and, subject to the direction of the Commission, he is the chief administrative officer of the Commission. R.S.O. 1970, c. 426, s. 4. Director

7. Where, Refunds

(*a*) an application for registration or renewal of registration is abandoned; or

(*b*) a preliminary prospectus or prospectus is withdrawn,

the Director may, upon the application of the person or company who made the application or filed the preliminary prospectus or prospectus, recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or the filing of the preliminary prospectus or prospectus or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund. R.S.O. 1970, c. 426, s. 17.

PART V

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

8.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 25 or refusing to issue a receipt for a prospectus under section 60 and the Commission may within thirty days of the decision notify the Director and any person or company directly Notification of decision

affected of its intention to convene a hearing to review the decision. *New.*

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper. R.S.O. 1970, c. 426, s. 28; 1971, c. 31, s. 5.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2 of this section or subsection 4 of section 3, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. 1973, c. 11, s. 1.

Appeal

9.—(1) Any person or company directly affected by a decision of the Commission, other than a decision under section 73, may appeal to the Supreme Court.

Stay

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal.

Certification of documents

(3) The Secretary shall certify to the Registrar of the Supreme Court,

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

Minister entitled to appear

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. 1973, c. 11, s. 2, *amended*. Further decisions

10.—(1) There shall be a Secretary to the Commission who may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 9; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

(2) Where the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated may exercise all the powers vested in the Secretary by this Act or the regulations. Acting Secretary

(3) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution. *New*. Certification by Secretary

PART VI

INVESTIGATIONS

Investigation order

11.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a trade in securities,

the Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions

promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities or other property are seized under subsection 6, the documents, records, securities or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated. R.S.O. 1970, c. 426, s. 21 (1-8).

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation. R.S.O. 1970, c. 426, s. 21 (9), *amended*.

Report to Minister

12. Where upon the report of an investigation made under section 11 it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to securities,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister. R.S.O. 1970, c. 426, s. 22.

Investigation by order of Minister

13. Notwithstanding section 11, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights, and privileges as a person appointed under section 11. R.S.O. 1970, c. 426, s. 23.

Evidence not to be disclosed

14. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 11 or 13.

Report to Minister

15. Where an investigation has been made under section 11, the Commission may, and, where an investigation has been made under section 13, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. R.S.O. 1970, c. 426, s. 25.

Order to freeze property

16.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b*, *c* or *d* to hold such funds or securities or direct the person or company referred to in clause *a*, *b*, *c* or *d* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 17 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-3, W-10, R.S.O. 1970, cc. 228, 89, 53

Application for directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification. R.S.O. 1970, c. 426, s. 26 (1, 2), *amended*.

Revocation or amendment of direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions it may impose revoking the direction or consenting to the release of any fund or security. *New*.

Notice to land registry offices

(4) In any of the circumstances mentioned in clause *a*, *b*, *c*, or *d* of subsection 1, the Commission may in writing or by telegram notify any land registrar or mining recorder that proceedings are being or are about to be taken that may affect land or mining claims belonging to the person or company referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate of *lis pendens* or a caution, and the Commission may in writing revoke or modify the notice. R.S.O. 1970, c. 426, s. 26 (3), *amended*.

Appointment of receiver, etc.

17.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities;

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company; or

(*e*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for the person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or

of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company. R.S.O. 1970, c. 426, s. 27 (1, 2), *amended*.

Ex parte application

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. R.S.O. 1970, c. 426, s. 27 (3), *amended*.

Powers of receiver, etc.

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

Enforcement of order

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Rules of practice

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. R.S.O. 1970, c. 426, s. 27 (4-6), *amended*.

PART VII

AUDITS

Audits by Commission

18.—(1) Notwithstanding anything in sections 19, 20 and 21, the Commission may in writing appoint any person to examine at any time,

(*a*) the financial affairs of a registrant or a reporting issuer; and

(*b*) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Commission.

Access to records

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. R.S.O. 1970, c. 426, s. 33, *amended*.

PART VIII

SELF-REGULATION—GENERALLY

Panel of auditors

19. Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario, shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, district association auditor or association auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years. R.S.O. 1970, c. 426, s. 30, *amended*.

Audits by stock exchange and associations

20.—(1) Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 19 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, district association auditor or association auditor, as the case may be.

(2) The by-laws, rules and regulations of every stock exchange in Ontario recognized by the Commission, the rules and regulations of the Ontario District of the Investment Dealers' Association of Canada and the regulations of the Broker-Dealers' Association of Ontario in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission. R.S.O. 1970, c. 426, s. 31. Audit by-laws subject to approval

21. Every registrant whose financial affairs are not subject to examination under section 20 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditor of the registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe. R.S.O. 1970, c. 426, s. 32. Filing of financial statements of registrants

PART IX

STOCK EXCHANGES

22.—(1) No person or company shall carry on business as a stock exchange in Ontario unless such stock exchange is recognized in writing as such by the Commission. Stock exchanges

(2) The Commission may, where it appears to it to be in the public interest, make any decision, Commission's powers

(*a*) with respect to the manner in which any stock exchange in Ontario carries on business;

(*b*) with respect to any by-law, ruling, instruction, or regulation of any such stock exchange;

(*c*) with respect to trading on or through the facilities of any such stock exchange or with respect to any security listed and posted for trading on any such stock exchange; or

(*d*) to ensure that issuers whose securities are listed and posted for trading on any such stock exchange comply with this Act and the regulations.

Review of decisions of stock exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a stock exchange in Ontario may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director. R.S.O. 1970, c. 426, s. 140.

Record of transactions

23. Every stock exchange in Ontario shall keep a record showing the time at which each transaction on such stock exchange took place and shall supply to any customer of any member of such stock exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation. R.S.O. 1970, c. 426, s. 141.

PART X

REGISTRATION

Registration for trading

24.—(1) No person or company shall,

(*a*) trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

(*b*) act as an underwriter unless the person or company is registered as an underwriter; or

(*c*) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions. R.S.O. 1970, c. 426, s. 6 (1), *amended*.

Termination re salesman

(2) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until notice in writing has been received by the Director from another registered dealer of the employment of the salesman by the other registered dealer and the reinstatement of the registration has been approved by the Director.

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman. R.S.O. 1970, c. 426, s. 6 (4, 5). Non-trading employee

25.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where in the opinion of the Director the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable. R.S.O. 1970, c. 426, s. 7 (1), *amended*. Granting of registration

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities. R.S.O. 1970, c. 426, s. 7 (3). Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. R.S.O. 1970, c. 426, s. 7 (2). Refusal

26.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 8. R.S.O. 1970, c. 426, s. 8, *amended*. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. *New*. Surrender

Subsequent applications

27. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1970, c. 426, s. 9.

Application

28. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. R.S.O. 1970, c. 426, s. 10.

Address for service

29. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1970, c. 426, s. 11.

Further information

30. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director. R.S.O. 1970, c. 426, s. 12, *amended*.

Residence

31.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration or if he is not a resident of Ontario at the date of the application unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer, or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration or is not a resident of Ontario at the date of the application unless at the time of the application he

is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration. R.S.O. 1970, c. 426, s. 14, *amended*.

Notice of changes

32.—(1) Subject to the regulations, every registered dealer shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) (i) any change in the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and, in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem

(2) Subject to the regulations, every registered adviser and underwriter shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) (i) any change in the directors or officers of the registered adviser or underwriter and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered adviser or underwriter.

Idem

(3) Every registered salesman shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions

(4) The Director may, upon an application of a registrant that is a reporting issuer, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 15, *amended*.

PART XI

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

33. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer or teacher;

(*c*) a registered dealer, or any partner, officer or employee thereof; and

(*d*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*e*) such other persons or companies as are designated by the regulations. R.S.O. 1970, c. 426, s. 18, *amended*.

34.—(1) Subject to the regulations, registration is not required in respect of the following trades: Exemption of trades

1. A trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada) or by a receiver under *The Judicature Act* or by a liquidator under *The Corporations Act*, *The Business Corporations Act*, or the *Winding-up Act* (Canada), or at a judicial sale. R.S.C. 1970, cc. B-3, W-10 R.S.O. 1970, cc. 228, 89, 53

2. An isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.

3. A trade where the party purchasing as principal, but not as underwriter, is,

   i. a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

   ii. a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

   iii. an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

   iv. Her Majesty in right of Canada or any province or territory of Canada, or

   v. any municipal corporation or public board or commission in Canada.

4. A trade where the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser.

5. A trade where the purchaser purchases as principal, if the trade is in a security which has an aggregate

acquisition cost to such purchaser of not less than $97,000.

6. A trade from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt.

7. A trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt.

8. A trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Director as non-trading employees, either individually or as a class.

9. A trade between a person or company and an underwriter acting as purchaser or between or among underwriters.

10. A trade in a security by a person or company acting solely through an agent who is a registered dealer.

11. The execution of an unsolicited order to purchase or sell through a registered dealer by a bank to which the *Bank Act* (Canada) applies or a trust company registered under *The Loan and Trust Corporations Act* as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company.

R.S.C. 1970, c. B-1
R.S.O. 1970, c. 254

12. A trade by an issuer,

    i. in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

    ii. in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws

of the jurisdiction in which the issuer was incorporated, organized or continued,

iii. in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer.

13. A trade by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie.

14. A trade by an issuer,

i. in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

ii. in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and either,

iii. the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or

iv. the issuer has delivered to the Commission information relating to the securities that is satisfactory to and accepted by the Commission.

15. A trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with,

i. a statutory amalgamation or arrangement, or

ii. a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company.

16. A trade in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part XIX.

17. A trade in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88 or by the Commission under section 99.

18. A trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000.

19. A trade by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment.

20. A trade by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, in which case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers.

21. A trade made by an issuer with a view to the sale of securities of its own issue if solicitations are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

i. each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase, except that subsequent sales to the same pur-

chasers may be carried out if made in compliance with written agreements entered into during that six month period,

ii. each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

(*a*) an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered dealer, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer; or

(*b*) a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

iii. the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

iv. no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this paragraph within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption.

22. A trade in a commodity futures option or a commodity futures contract by a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. ...

23. A trade in respect of which the regulations provide that registration is not required.

(2) Subject to the regulations, registration is not required to trade in the following securities: Exemption re securities

1. Bonds, debentures or other evidences of indebtedness,

(*a*) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any foreign country or any political division thereof;

(*b*) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated;

R.S.C. 1970, c. B-1
R.S.O. 1970, cc. 254, 224

(*c*) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company or loan corporation registered under *The Loan and Trust Corporations Act* or an insurance company licensed under *The Insurance Act*;

R.S.C. 1970, c. B-9

(*d*) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America; or

(*e*) of or guaranteed by the Asian Development Bank or the Inter-American Development Bank, if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America and if, with respect to such securities, such documents, certificates, reports, releases, statements, agreements or other information as may be required by the Commission are filed.

2. Certificates or receipts issued by a trust company registered under *The Loan and Trust Corporations Act* for moneys received for guaranteed investment.

3. Securities issued by a private mutual fund.

4. Negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than $50,000.

5. Mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under *The Mortgage Brokers Act*. R.S.O. 1970, c. 278

6. Securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual.

7. Securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.

8. Securities issued by corporations to which *The Co-operative Corporations Act, 1973* applies. 1973, c. 101

9. Shares of a credit union within the meaning of *The Credit Unions and Caisses Populaires Act, 1976*. 1976, c. 62

10. Securities of a private company where they are not offered for sale to the public.

11. Securities issued and sold by a prospector for the purpose of financing a prospecting expedition.

12. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, where the securities are sold by the prospector or one of the prospectors who staked claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate, and the prospector delivers a copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor.

13. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, if the securities are not offered for sale to the public and are sold to not more than fifty persons or companies.

14. Securities issued by a mining company or a mining exploration company as consideration for mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary.

15. Securities in respect of which the regulations provide that registration is not required. R.S.O. 1970, c. 426, s. 19 (1, 2); 1971, c. 31, s. 3, *amended*.

Trades by trust company R.S.O. 1970, c. 254

(3) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it. *New*.

PART XII

TRADING IN SECURITIES GENERALLY

Confirmation of trade

35.—(1) Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the quantity and description of the security;

(*b*) the consideration;

(*c*) whether or not the registered dealer is acting as principal or agent;

(*d*) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;

(*e*) the date and the name of the stock exchange, if any, upon which the transaction took place;

(*f*) the commission, if any, charged in respect of the trade; and

(*g*) the name of the salesman, if any, in the transaction. R.S.O. 1970, c. 426, s. 67 (1).

(2) Where a trade is made in a security of a mutual fund, the confirmation shall contain, in addition to the requirements of subsection 1, Idem

(*a*) the price per share or unit at which the trade was effected; and

(*b*) the amount deducted by way of sales, service and other charges.

(3) Subject to the regulations, where a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall contain in addition to the requirements of subsections 1 and 2, Idem

(*a*) in respect of an initial payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;

(*b*) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges, that is allocated to the payment which is the subject of the confirmation;

(*c*) in respect of an initial purchase made under a contractual plan which permits the deduction of sales, service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases;

(*d*) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the confirmation is sent or delivered. *New*.

Coded identification

(4) For the purposes of clauses *d* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(5) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning. R.S.O. 1970, c. 426, s. 67 (2, 3).

Disclosure by agent

(6) Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the security was bought or sold. R.S.O. 1970, c. 426, s. 67 (4), *amended*.

Order prohibiting calls to residences

36.—(1) The Commission may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to,

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any security or in any class of securities. R.S.O. 1970, c. 426, s. 68 (1), *amended*.

Hearing

(2) The Commission shall not make an order under subsection 1 without giving the person or company or class of persons or companies affected an opportunity to be heard. *New*.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned

where an officer, director or salesman of the person or company calls or telephones on its behalf. R.S.O. 1970, c. 426, s. 68 (3, 4).

Representations prohibited

37.—(1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he or any person or company,

(*a*) will resell or repurchase; or

(*b*) will refund all or any of the purchase price of,

such security.

Future value

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

Listing

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

Application of section

(4) This section does not apply to any representation referred to in subsection 1 made to a person or to a company where the representation is contained in an enforceable written agreement and the security has an aggregate acquisition cost of more than $50,000. R.S.O. 1970, c. 426, s. 69, *amended*.

Where dealer is principal

38.—(1) Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract. R.S.O. 1970, c. 426, s. 70 (1).

Effect of statement

(2) A statement made in compliance with this section or clause *c* of subsection 1 of section 35 that a dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent such dealer from acting as agent in connection with a trade of such security.

Application of section

(3) This section does not apply to trades referred to in subsection 1 of section 34 or to securities referred to in subsection 2 of section 34. R.S.O. 1970, c. 426, s. 70 (3, 4).

Disclosure of financial interest of advisers and dealers

39. Subject to the regulations, every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including,

(*a*) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;

(*b*) any option that any of them may have in respect of such securities, and the terms thereof;

(*c*) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;

(*d*) any financial arrangement relating to such securities that any of them may have with any person or company; and

(*e*) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities. R.S.O. 1970, c. 426, s. 72, *amended*.

Idem

40. Every registered dealer that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it and intended for general circulation shall, in type not less legible than that used in the body of the publication, state whether the registered dealer or any of its officers or directors has at any time during the past twelve months assumed an underwriting liability with respect to such securities or for consideration provided financial advice to the issuer of such securities or whether the registered dealer or any of its officers or directors will receive any fees as a result of the recommended action. *New.*

Publication of names

41. Every registered dealer shall publish the name of every person or company having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the dealer, on all letterheads, circulars and stationery that contain any offer or solicitation respecting a trade in securities or in a preliminary prospectus or prospectus upon or in which the name of the registered dealer appears as underwriter but where the Commission determines that a registered dealer or a class of registered dealers is subject to conditions of registration or to regulations imposed by a self-regulatory organization that require provision to customers in the same or some other manner of other appropriate information, the Commission may, subject to such terms and conditions as the Commission may impose, exempt the registered dealer or class of registered dealers from the requirements of this section. R.S.O. 1970, c. 426, s. 73, *amended*.

Use of name of another registrant

42. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S.O. 1970, c. 426, s. 74.

Registration not to be advertised

43. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. R.S.O. 1970, c. 426, s. 75.

Holding out by unregistered person

44. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. R.S.O. 1970, c. 426, s. 76.

Advertising approval by Commission

45. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant

or upon the merits of any security or issuer. R.S.O. 1970, c. 426, s. 77.

Margin contracts

46.—(1) Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which,

(*a*) he;

(*b*) his firm or a partner thereof; or

(*c*) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers, any such contract with a customer is, at the option of the customer, voidable and the customer may recover from the dealer all moneys paid with interest thereon or securities deposited in respect thereof.

Exercise of option

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in Ontario. R.S.O. 1970, c. 426, s. 78.

Declaration as to short position

47. Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and who,

(*a*) at the time of placing the order, does not own the security; or

(*b*) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security. R.S.O. 1970, c. 426, s. 79.

Shares in name of registrant not to be voted

48.—(1) Subject to subsection 4, voting securities of an issuer registered in the name of,

(*a*) a registrant or in the name of his nominee; or

(*b*) a custodian or in the name of his nominee, where such issuer is a mutual fund that is a reporting issuer,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

Forwarding of information by registrant

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security so registered at the record date for notice of meeting a copy of any notice, financial statement, information circular or other material but the registrant or custodian is not required to send or deliver such material unless the issuer or the beneficial owner of such securities has agreed to pay the reasonable costs to be incurred by the registrant or custodian in so doing. R.S.O. 1970, c. 426, s. 80 (1), *amended*.

Copies of information

(3) At the request of a registrant or custodian, the person or company sending material referred to in subsection 2 shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

Voting of shares

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection 1 in accordance with any written voting instructions received from the beneficial owner.

Proxies

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection 1. R.S.O. 1970, c. 426, s. 80 (3-5), *amended*.

"custodian" defined

(6) For the purpose of this section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement. *New*.

Submission of advertising

49.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver

to the Commission at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order pursuant to subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made pursuant to subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so. *New.*

PART XIII

PROSPECTING SYNDICATES

Agreements

50.—(1) Upon the filing of a prospecting syndicate agreement and the issuance of a receipt therefor by the Director, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement where,

(*a*) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development, or the acquisition of mining properties, or any combination thereof;

(*b*) the agreement clearly sets out,

(i) the purpose of the syndicate,

(ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,

(iii) the maximum amount, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,

(iv) the maximum number of units in the syndicate, not exceeding 33⅓ per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,

(v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Ontario and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,

(vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,

(vii) that after the sale for cash of any issued units of the syndicate no mining properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate that have been sold for cash,

(viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,

(ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,

(x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash,

(xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units; and

(*c*) the agreement limits the capital of the syndicate to a sum not exceeding $250,000.

Receipt for filed agreement

(2) The Director may in his discretion issue a receipt for a prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses *a*, *b* and *c* of subsection 1.

Application of R.S.O. 1970, c. 340

(3) After a receipt is issued by the Director for a prospecting syndicate agreement, the requirements of *The Partnerships Registration Act* as to filing do not apply to the prospecting syndicate.

Prohibition of trading by dealer

(4) No registered dealer shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal. R.S.O. 1970, c. 426, s. 34, *amended*.

Receipt

(5) The Director shall not refuse to issue a receipt under subsection 1 without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. *New*.

PART XIV

PROSPECTUSES—DISTRIBUTION

"distribution", extended meaning

51. To but not including the day eighteen months after this Act comes into force, for the purposes of sections 53 to 63, "distribution" means only a distribution that is a distribution to the public. *New*.

Prospectus required

52.—(1) No person or company shall trade in a security on his own account or on behalf of any other person or company,

(*a*) before the day eighteen months after this Act comes into force where such trade would be a distribution to the public of such security;

(*b*) on and after the day eighteen months after this Act comes into force, where such trade would be a distribution of such security,

unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director. R.S.O. 1970, c. 426, s. 35 (1); 1971, c. 31, s. 6, *amended*.

Filing without distribution

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated. *New*.

Preliminary prospectus

53.—(1) A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included.

Idem

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S.O. 1970, c. 426, s. 38, *amended*.

Receipt for preliminary prospectus

54. The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S.O. 1970, c. 426, s. 35 (2).

Prospectus

55.—(1) A prospectus shall provide full, true, and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

Supplemental material

(2) The prospectus shall contain or be accompanied by such financial statements, reports, or other documents as are required by this Act or the regulations. R.S.O. 1970, c. 426, s. 41, *amended*.

Amendment to preliminary prospectus on material change

56.—(1) Subject to subsection 2, where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 1 of section 52 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs.

Idem

(2) Where an amendment to a prospectus is filed under subsection 1 for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus such additional distribution shall not be proceeded with for a period of ten days

after the amendment is filed or, in the event the Commission informs the party filing in writing within ten days of the filing that it objects to the further distribution until such time as a receipt for the amended prospectus is obtained from the Director.

Notice of amendment

(3) An amendment to a preliminary prospectus referred to in subsection 1 shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (2, 3), *amended*.

Certificate by issuer

57.—(1) Subject to subsection 3, a prospectus filed under subsection 1 of section 52 or subsection 1 of section 61 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(2) Subject to subsection 3, a prospectus filed under subsection 2 of section 52 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.

Idem

(4) Where the Director is satisfied upon evidence or submissions made to him that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer.

(5) With the consent of the Director, a promoter need not sign the certificate in a prospectus. Idem

(6) The Director may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection 1 or 2 subject to such conditions as the Director may consider proper. Certificate of promoter

(7) With the consent of the Director, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 52, *amended*. Idem

58.—(1) Where there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus: Certificate of underwriter

> *To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 53, *amended*. Idem

59. Every prospectus shall contain a statement of the rights given to a purchaser by sections 70 and 126. R.S.O. 1970, c. 426, ss. 64 (9), 65 (8), *amended*. Statement of rights

60.—(1) Subject to subsection 2, the Director shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so. Issuance of receipt

(2) The Director shall not issue a receipt for a prospectus if it appears to him that, Refusal of receipt

(*a*) the prospectus or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) contains a misrepresentation;

(*b*) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(*c*) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(*d*) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(*e*) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(*f*) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into;

(*g*) such agreement as the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(*h*) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(*i*) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

Hearing

(3) The Director shall not refuse to issue a receipt under subsection 1 or 2 without giving the person or company who filed the prospectus an opportunity to be heard. R.S.O. 1970, c. 426, s. 61 (1, 2); 1971, c. 31, s. 16, *amended*.

Referral to Commission

(4) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus, or prospectus raises a material question involving the public interest under subsection 1 or a new or novel question of interpretation under subsection 2 that might result in the Director refusing to issue a receipt under subsection 1 or 2, the Director may refer the question to the Commission for determination.

Form of question

(5) The Director shall state the question in writing setting out the facts upon which the question is based.

Filing of question

(6) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission, and a copy of the question shall forthwith be served by the Secretary upon any interested person or company.

Hearing by Commission

(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration under subsections 1 and 2.

Decision of Commission

(8) Subject to any order of the Supreme Court made under section 9, the decision of the Commission on the question is binding on the Director. *New*.

Refiling of prospectus

61.—(1) No distribution of a security to which subsection 1 of section 52 applies shall continue longer than twelve months from the later of either,

(*a*) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or

(*b*) the date of the last prospectus filed under this section,

as the case may be, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Director. R.S.O. 1970, c. 426, s. 56; 1971, c. 31, s. 11, *amended*.

Idem

(2) A distribution may be continued for a further twelve months if,

(*a*) a *pro forma* prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;

(*b*) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and

(*c*) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.

Idem

(3) The continued distribution of securities after the lapse date does not contravene subsection 1 unless and until any of the conditions of subsection 2 are not complied with.

Failure to refile

(4) Subject to any extension granted under subsection 5, all trades completed in reliance upon subsection 2 after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection 2 are not complied with.

Extension of time

(5) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection 2 where in its opinion it would not be prejudicial to the public interest to do so. *New*.

Notice to Commission of distribution to public

62.—(1) No dealer shall engage in the distribution of a security to which section 52 or 61 is applicable until such dealer has notified the Commission in writing of his intention to engage in such distribution.

Notice of Commission of cessation of distribution to public

(2) Every dealer shall forthwith notify the Commission in writing when he has ceased to engage in the distribution of a security to which section 52 or 61 is applicable. R.S.O. 1970, c. 426, s. 54, *amended*.

Orders to furnish information re distribution to public

63.—(1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations.

Idem

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper. R.S.O. 1970, c. 426, s. 60, *amended*.

PART XV

DISTRIBUTION—GENERALLY

"waiting period" defined

64.—(1) In this section, "waiting period" means the interval, which shall be at least ten days, between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus.

Distribution of material during waiting period

(2) Notwithstanding section 52, but subject to Part XII, it is permissible during the waiting period,

(*a*) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be

permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(*b*) to distribute a preliminary prospectus; and

(*c*) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him. R.S.O. 1970, c. 426, s. 36.

Distribution of preliminary prospectus

65. Any dealer distributing a security to which section 64 applies shall, in addition to the requirements of clause *c* of subsection 2 of section 64, send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S.O. 1970, c. 426, s. 37, *amended*.

Distribution list

66. Any dealer distributing a security to which section 64 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. *New*.

Defective preliminary prospectus

67. Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted by subsection 2 of section 64 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (1).

Material given on distribution

68. From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause *a* of subsection 2 of section 64 or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S.O. 1970, c. 426, s. 57; 1971, c. 31, s. 12, *amended*.

69.—(1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 2 of section 60 exist, the Commission may order that the distribution of the securities under the prospectus shall cease. Order to cease trading

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded. Hearing

(3) A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates and upon every dealer who has notified the Commission of his intention to engage in the distribution of the securities, and forthwith upon the receipt of the notice, Notice

(*a*) distribution of the securities under prospectus by the person or company named in the order shall cease; and

(*b*) any receipt issued by the Director for the prospectus is revoked. R.S.O. 1970, c. 426, s. 62; 1971, c. 31, s. 17, *amended*.

70.—(1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 1 of section 52 or section 61 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after entering into such agreement. Obligation to deliver prospectus

(2) An agreement of purchase and sale referred to in subsection 1 is not binding upon the purchaser, if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after receipt by the Withdrawal from purchase

purchaser of the latest prospectus and any amendment to the prospectus.

Application of subs. 2

(3) Subsection 2 does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection 2, otherwise than to secure indebtedness, before the expiration of the time referred to in subsection 2.

Time of receipt

(4) For the purpose of this section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Receipt of prospectus by agent

(5) The receipt of the latest prospectus or any amendment to the prospectus by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection 1 shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus and any amendment to the prospectus.

Receipt of notice by agent

(6) The receipt of the notice referred to in subsection 2 by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection 1 shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice.

Dealer as agent

(7) For the purpose of this section, a dealer shall not be considered to be acting as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

Onus of proof

(8) The onus of proving that the time for giving notice under subsection 2 has expired is upon the dealer from whom the purchaser has agreed to purchase the security. R.S.O. 1970, c. 426, s. 64; 1971, c. 31, s. 19, *amended*.

PART XVI

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

Prospectus not required

71.—(1) Subject to the regulations, sections 52 and 61 do not apply to a distribution where,

(*a*) the purchaser is,

(i) a bank to which the *Bank Act* (Canada) applies or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

(ii) a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

(iii) an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

(iv) Her Majesty in right of Canada or any province or territory of Canada, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(*b*) the trade is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account, where such trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;

(*c*) the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;

(*d*) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than $97,000;

(*e*) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt;

(*f*) the trade is made by an issuer,

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer;

(*g*) the trade is made by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie;

(*h*) the trade is made by an issuer,

(i) in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and either,

(iii) the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or

(iv) the issuer has delivered to the Commission information relating to the securities that is

satisfactory to and accepted by the Commission;

(*i*) the trade is made in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;

(*j*) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part XIX;

(*k*) the trade is made in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88 or by the Commission under section 99;

(*l*) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000;

(*m*) the trade is made by an issuer in a security of its own issue in consideration of mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary;

(*n*) the trade is made by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(*o*) the trade is made by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, in which

case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers;

(*p*) the trade is made by an issuer with a view to the sale of securities of its own issue if solicitations are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

(i) each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

a. an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered dealer, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer, or

b. a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

(iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption;

(*q*) the trade is made from one registered dealer to another registered dealer where the registered dealer making the purchase is acting as principal;

(*r*) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters; or

(*s*) the trade is in a commodity futures option or commodity futures contract where such trade is that of a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. . . .

Trust companies deemed principals R.S.O. 1970, c. 254

(2) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

Report

(3) Subject to the regulations, where a trade has been made under clause *a*, *b*, *c*, *d*, *l*, *p* or *q* of subsection 1, the vendor shall within ten days file a report prepared and executed in accordance with the regulations, but no report is required where, by a trade under clause *a* of subsection 1, a bank to which the *Bank Act* (Canada) applies or a loan corporation or trust company registered under *The Loan and Trust Corporations Act* acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness. R.S.C. 1970, c. B-1

First trades deemed distribution

(4) The first trade in securities previously acquired pursuant to an exemption contained in clause *a*, *b*, *c*, *d*, *l*, *m*, *p* or *q* of subsection 1, other than a further trade exempted by subsection 1, is a distribution, unless,

(*a*) the issuer of the security is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(*b*) (i) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission and comply with the requirements of either clause *m* or *n* of subsection 1 of section 383 of *The Insurance Act*, and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or R.S.O. 1970, c. 224

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer or are preferred shares of an issuer and comply with the requirements of clause *k* or *m*, as the case may be, of subsection 1 of section 383 of *The Insurance Act* and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or

R.S.O. 1970, c. 224

(iii) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed, and have been held at least one year from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later; and

(*c*) the vendor files a report within ten days prepared and executed in accordance with the regulations,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

Idem

(5) The first trade in securities previously acquired under an exemption contained in clause *f*, *i*, *j*, *k* or *n* of subsection 1 and the first trade in previously issued securities of a company that has ceased to be a private company, other than a further trade exempted by subsection 1, is a distribution except that where,

(*a*) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months or, in the case of securities acquired under clause *i* of subsection 1, one of the amalgamating or merged corporations or one of the continuing corporations has been a reporting issuer for twelve months and the issuer is not in default of any requirement of this Act or the regulations;

(*b*) disclosure to the Commission has been made of its exempt trade or in the case of a company that has ceased to be a private company the issuer has filed with the Commission such report with respect to its outstanding securities as may be required by the regulations; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the trade,

then such first trade is a distribution only if it is a distribution as defined in subparagraph iii of paragraph 11 of subsection 1 of section 1.

Idem

(6) The first trade in securities previously purchased under an exemption contained in clause *o* or *r* of subsection 1, other than a further trade exempted by subsection 1, is a distribution.

Prospectus not required

(7) Sections 52 and 61 do not apply to a distribution within the meaning of subparagraph iii of paragraph 11 of subsection 1 of section 1 or by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt in accordance with clause *e* of subsection 1, if,

(*a*) the distribution is exempted by subsection 1; or

(*b*) the issuer of the security is a reporting issuer and has been a reporting issuer for at least eighteen months and is not in default of any requirement of this Act or the regulations and the seller, unless exempted by the regulations,

(i) files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than fourteen days prior to the proposed trade,

a. a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and

b. a declaration signed by each seller as at a date not more than twenty-four

hours prior to its filing and prepared and executed in accordance with the regulations and certified as follows:

"The seller for whose account the securities to which this certificate relates are to be sold hereby represents that he has no knowledge of any material change which has occurred in the affairs of the issuer of the securities which has not been generally disclosed and reported to the Commission, nor has he any knowledge of any other material adverse information in regard to the current and prospective operations of the issuer which have not been generally disclosed",

and,

(ii) files within three days after the completion of any trade a report of the trade in the form prescribed under Part XX,

provided that the notice required to be filed under sub-subclause a of subclause i and the declaration required to be filed under sub-subclause b of subclause i shall be renewed and filed at the end of sixty days after the original date of filing and thereafter at the end of each twenty-eight day period so long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of such trade. *New.*

Certificate re reporting issuer

(8) Subject to subsection 10, for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to apply to the Commission for a certificate issued for this purpose in accordance with section 136 and is entitled to rely on the certificate.

List re defaulting reporting issuers

(9) Subject to subsection 10, for the purpose of determining whether a reporting issuer is not in default of any requirement

of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers which shall be maintained by the Commission for public inspection in its offices during its normal business hours.

(10) No person or company who knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate or on the list. Exception

(11) For the purposes of this section, an issuer shall be deemed to have been a reporting issuer from the date that it met the condition of the appropriate subclause of paragraph 38 of subsection 1 of section 1 provided that in each case it is currently in compliance with the requirements of this Act and in the case of qualification under subclause iii of paragraph 38 of subsection 1 of section 1 it is also currently listed and posted for trading on any stock exchange in Ontario recognized by the Commission. *New.* Reporting issuers

72.—(1) Sections 52 and 61 do not apply to a distribution of securities, Prospectus not required

(*a*) referred to in subsection 2 of section 34 excepting paragraphs 14 and 15 thereof;

(*b*) that are listed and posted for trading on any stock exchange recognized for the purpose of this section by the Commission where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange and the Commission;

(*c*) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided,

(i) the option has been written by a member of an exchange recognized by the Commission for this purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for this purpose,

(ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for this purpose, and

(iii) the option is in the form from time to time prescribed by the regulations; or

(*d*) that are exempted by the regulations.

Application of ss. 70 and 126

(2) Sections 70 and 126 apply *mutatis mutandis* to a distribution under clause *b* of subsection 1 as if sections 52 and 61 were applicable thereto, and the statement of material facts referred to in clause *b* of subsection 1 shall be deemed conclusively to be a prospectus for the purposes of sections 70 and 126. *New.*

Order exempting from registration a prospectus

73.—(1) The Commission may, upon the application of an interested person or company, rule that an intended trade is not subject to section 24 or 52 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary. 1971, c. 31, s. 14, *part, amended.*

Determination of whether distribution has ceased

(2) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly.

Ruling final

(3) A decision of the Commission under this section is final and there is no appeal therefrom. 1971, c. 31, s. 14, *part.*

PART XVII

CONTINUOUS DISCLOSURE

Publication of material change

74.—(1) Subject to subsection 3, where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a press release authorized by a senior officer disclosing the nature and substance of the change.

Report of material change

(2) Subject to subsection 3, the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

Idem

(3) Where,

(*a*) in the opinion of the reporting issuer, the disclosure required by subsections 1 and 2 would be

unduly detrimental to the interests of the reporting issuer; or

(*b*) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that persons with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, in lieu of compliance with subsection 1, forthwith file with the Commission the report required under subsection 2 marked "confidential" together with written reasons for non-disclosure.

Idem

(4) Where a report has been filed with the Commission under subsection 3, the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the intitial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection 1 or, if the material change consists of a decision of the type referred to in clause *b* of subsection 3, until that decision has been rejected by the board of directors of the issuer. *New*.

Trading where undisclosed change

75.—(1) No person or company in a special relationship with a reporting issuer shall,

(*a*) purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change in the affairs of the reporting issuer that he or it knew or ought reasonably to have known had not been generally disclosed; or

(*b*) inform, other than in the necessary course of business, another person or company about a fact or change which he knows is a material fact or material change before the material fact or material change has been generally disclosed.

Exception

(2) No purchaser or vendor shall be found to have contravened clause *a* of subsection 1 if such purchaser or vendor proves that he did not make use of knowledge of the material fact or material change in purchasing or selling the securities.

Interpretation

(3) For the purposes of this section, a person or company is in a special relationship with a reporting issuer where,

(*a*) the person or company is an insider or an affiliate of the reporting issuer;

(*b*) the person is a director, officer or employee of the reporting issuer or of a company that is an insider or an affiliate of the reporting issuer;

(*c*) the person or company has engaged, is engaging in or proposes to engage in any business or professional activities with or on behalf of the reporting issuer and thereby has acquired knowledge of the material fact or material change; or

(*d*) the person or company is an associate of the reporting issuer or of any person or company referred to in clause *a*, *b* or c. *New.*

Interim financial statement

76.—(1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the three-month period that commenced on the date of incorporation or organization and for each of the two subsequent three-month periods during its first financial year, if the reporting issuer has not completed a financial year; or

(*b*) for the three-month period of the current financial year that commenced immediately following the last financial year and for each of the two subsequent three-month periods during the current financial year, including a comparative statement for the corresponding three-month period in the last financial year, if the reporting issuer has completed a financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 130 (1), *amended.*

Idem

(2) Every mutual fund in Ontario shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the six-month period that commenced on the date of incorporation or organization if the reporting issuer has not completed a financial year; or

(*b*) for the six-month period that commenced immediately after the last financial year, if the reporting issuer has completed a financial year,

made up and certified by the regulations and in accordance with generally accepted accounting principles. *New.*

77.—(1) Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to, Comparative financial statements

(*a*) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer or mutual fund has completed a financial year, the last financial year, as the case may be; and

(*b*) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 120 (1), *amended*.

(2) Every financial statement referred to in subsection 1 shall be accompanied by a report of the auditor of the reporting issuer or mutual fund prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 119 (2), *amended*. Auditor's report

(3) The auditor of a reporting issuer or mutual fund shall make such examinations as will enable him to make the report required by subsection 2. R.S.O. 1970, c. 426, s. 119 (1), *amended*. Auditor's examination

(4) For the purposes of this Part, "auditor", where used in relation to the reporting issuer or mutual fund, includes the auditor of the reporting issuer or mutual fund and any other independent public accountant. *New*. "auditor" defined

78. Every financial statement required to be filed pursuant to section 76 or section 77 shall be concurrently sent by the reporting issuer or the mutual fund in Ontario, as the case may be, to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer is in Ontario, but where the reporting issuer is subject to a corresponding requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued then compliance with such corresponding requirement shall be deemed to be compliance with this section. *New*. Delivery of financial statements to security holders

79. Upon the application of a reporting issuer or upon the motion of the Commission, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose, Relief against certain requirement

(*a*) permitting the omission from the financial statements required to be filed under this Part of,

(i) comparative financial statements for particular periods of time,

(ii) sales or gross operating revenue where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the reporting issuer, or

(iii) basic earnings per share or fully diluted earnings per share; or

(*b*) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Part or the regulations relating to a requirement of this Part,

(i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,

(ii) if the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its, or their, securities in a form, or at times, different from those required by this Part, or

(iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S.O. 1970, c. 426, s. 132 (1), *amended*.

Filing of information circular

80.—(1) Where the management of a reporting issuer is required to send an information circular under clause *a* of subsection 1 of section 85, the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations.

Idem

(2) In any case where subsection 1 is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations. *New*.

Filing of documents filed in another jurisdiction

81. Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued

require the reporting issuer to file substantially the same information in that jurisdiction as is required by this Part, the reporting issuer may comply with the filing requirements of this Part by filing copies of the press release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. *New.*

Order relieving small reporting issuer

82. Upon the application of a reporting issuer that has fewer than fifteen security holders whose latest address as shown on the books of the reporting issuer is in Ontario, the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer shall be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. *New.*

PART XVIII

PROXIES AND PROXY SOLICITATION

Interpretation

83. In this Part,

(*a*) "information circular" means an information circular prepared in accordance with the regulations;

(*b*) "solicit" and "solicitation" include,

(i) any request for a proxy whether or not accompanied by or included in a form of proxy,

(ii) any request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,

(iv) the sending or delivery of a form of proxy to a security holder under section 84,

but do not include,

(v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or

(vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy. R.S.O. 1970, c. 426, s. 101 (*b*, *c*), *amended*.

Mandatory solicitation of proxies

84. Subject to section 87, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send by prepaid mail to each such security holder who is entitled to notice of meeting, at his latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S.O. 1970, c. 426, s. 102 (1), *amended*.

Information circular

85.—(1) Subject to subsection 2 and section 87, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless,

(*a*) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such security holder of the reporting issuer whose proxy is solicited at his latest address as shown on the books of the reporting issuer; or

(*b*) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited.

Application of subs. 1

(2) Subsection 1 does not apply to,

(*a*) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;

(*b*) any solicitation by a person or company made under section 48; or

(*c*) any solicitation by a person or company in respect of securities of which he is the beneficial owner. R.S.O. 1970, c. 426, s. 103 (1, 2), *amended*.

Voting where proxies

86. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his name to be voted unless,

(*a*) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or

(*b*) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S.O. 1970, c. 426, s. 106, *amended*.

Compliance with laws of other jurisdiction

87.—(1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this Part, the requirements of this Part do not apply.

Exemption by order

(2) Subject to subsection 1, upon the application of any interested person or company, the Commission may,

(*a*) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or

(*b*) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as the Commission may impose; exempting, in whole or in part, a person or company from the requirements of this Part and of section 80. *New*.

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

Interpretation

88.—(1) In this Part,

(*a*) "class of securities" means the particular class or series of securities for which a take-over bid or an issuer bid is made;

(*b*) "day" means a clear day and a period of days shall be deemed to commence the day following the event which began the period and shall be deemed to terminate on midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate on midnight of the day next following that is not a Sunday or holiday;

(*c*) "directors' circular" means a directors' circular prepared in accordance with the regulations;

(*d*) "issuer bid" means,

(i) an offer made by an issuer to security holders the last address of any of whom as shown on the books of the issuer is in Ontario to purchase, redeem or otherwise acquire any or all of a class of the securities of the issuer, other than debt securities that are not convertible into equity securities,

(ii) the acceptance by an issuer of an offer to sell securities of the issuer, other than debt securities that are not convertible into equity securities, and the issuer accepting the offer to sell shall be deemed to be an offeror;

(*e*) "market price", as to securities in which there is a published market, at any date, means,

(i) except where a determination has been made by the Commission under clause *b* of section 99, the price determined in accordance with the regulations, by reference to the price of such securities as established by trades on the published market, or

(ii) where the Commission has made a determination of market price under clause *b* of section 99, the price so determined;

(*f*) "offeree" means a person or company to whom a take-over bid or an issuer bid is made and whose

latest address as shown on the books of the offeree company is in Ontario;

(*g*) "offeree company" means a company or other issuer whose securities are the subject of a take-over bid;

(*h*) "offeror" means a person or company other than an agent, who makes a take-over bid or an issuer bid and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

then each of them shall be deemed to be an offeror if the offer made by any of them is a take-over bid;

(*i*) "offeror's presently-owned securities" means voting securities of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or associates of the offeror and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

includes the voting securities owned by all of such persons or companies and their associates;

(*j*) "published market", as to any class of securities, means a stock exchange recognized by the Commission for purposes of this Part on which such securities are listed, or any other market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation; and

(*k*) "take-over bid" means,

(i) an offer made to security holders, the last address of any of whom as shown on the books of the offeree company or other issuer is in Ontario, to purchase directly or indirectly voting securities of the company or other issuer,

(ii) the acceptance by a person or company of an offer to sell voting securities of a company or other issuer and such acceptance shall be deemed to constitute an offer to purchase and the person or company accepting the offer shall be deemed to be an offeror, or

(iii) a combination of an offer to purchase referred to in subclause i and an acceptance of an offer to sell referred to in subclause ii,

where the voting securities which are the subject of the offer to purchase, the acceptance of the offer to sell or the combination thereof, as the case may be, together with the offeror's presently owned securities will in the aggregate exceed 20 per cent of the outstanding voting securities of the company or other issuer and where two or more persons or companies make or accept offers jointly or in concert or intending to exercise jointly or in concert any voting rights attaching to the securities to be acquired, then the securities owned by each of them shall be included in the calculation of the percentage of the outstanding voting securities of the company or other issuer owned by each of them;

(*l*) "uniform act province" means a province or territory of Canada designated in the regulations as a province or territory which has legislation in effect containing provisions substantially the same as this Part and section 129. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted take-over bids

(2) Subject to section 91, a take-over bid is exempted from the requirements of this Part where,

(*a*) it is made through the facilities of a stock exchange recognized by the Commission for the purpose of this section according to the by-laws, regulations or policies of the stock exchange;

(*b*) it is an offer to purchase securities in a private company;

(*c*) it is an offer to purchase securities by way of agreements with fewer than fifteen security holders and not made pursuant to an offer to security holders generally, but where an offeror enters into an agreement to purchase securities from a person or company and the offeror knows or ought to know after reasonable inquiry that,

(i) one or more other persons or companies on whose behalf that person or company is acting as trustee, executor, administrator or other legal representatives, have a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of security holders with whom there have been agreements, but where an *inter vivos* trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered to be a single security holder in such determination, or

(ii) the person or company acquired the securities during the two years preceding the date of the agreement with the intent that they should be sold under such agreement, then each person or company from whom those securities were acquired shall be included in the determination of the number of security holders with whom there have been agreements;

(*d*) it involves the acquisition of not more than 5 per cent of the voting securities of the offeree company but the aggregate number of voting securities acquired by the offeror, his associates or affiliates, within any period of twelve consecutive months in reliance on the exemptions provided by this subsection, shall not exceed 5 per cent of the outstanding voting securities of the offeree company at the beginning of the period, and this clause does not apply to any purchase of voting securities in which there is a published market if that purchase is effected above the market price at the date of purchase plus reasonable brokerage fees or other commission; or

(*e*) it is an offer to acquire voting securities of an issuer made by and accepted by a person or company each of whom is, as regards such issuer, a person or company referred to in subparagraph iii of paragraph 11 of subsection 1 of section 1. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted issuer bid

(3) An issuer bid is exempted from the requirements of this Part where,

(*a*) the securities are purchased, redeemed or otherwise acquired in accordance with the terms and con-

ditions agreed to at the time they were issued or subsequently varied by amendment of the documents setting out those terms and conditions, or are acquired to meet sinking fund requirements or from an employee of the issuer or an employee of an affiliate;

(*b*) the purchases, redemptions or other acquisitions are required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated or organized;

(*c*) the issuer bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this Part according to the by-laws, regulations or policies of the stock exchange;

(*d*) following the publication of a notice of intention in the form and in the manner prescribed by the regulations, the issuer purchases securities of the issuer, but the aggregate number, or in the case of convertible debt securities, the aggregate principal amount, of securities purchased by the issuer in reliance on the exemption provided by this clause during any period of twelve consecutive months shall not exceed 5 per cent of the securities of the class sought outstanding at the commencement of the period; or

(*e*) the issuer bid is made by a private company. *New.*

Requirements for take-over and issuer bids

89.—(1) The following provisions apply to every take-over bid and issuer bid:

1. The take-over bid or issuer bid shall be sent to all holders of the class of securities sought, and of securities convertible into, or carrying the right to purchase, securities of that class, whose last address on the records of the offeree company or issuer is in Ontario.

2. The period of time in which securities may be deposited pursuant to a take-over bid or an issuer bid shall not be less than twenty-one days from the date thereof.

3. Any securities deposited pursuant to a take-over bid or an issuer bid shall not be taken up and paid for by the offeror until the expiration of ten days from its date.

4. Any securities deposited pursuant to a take-over bid or an issuer bid may be withdrawn by an offeree

at any time until the expiration of ten days from its date.

5. Notice of withdrawal of any securities pursuant to paragraph 4 shall be made in writing, including telegraphic communication, by the offeree or his agent and must be actually received by the depositary.

6. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, securities deposited pursuant thereto shall not be taken up and paid for by an offeror until the expiration of twenty-one days from its date.

7. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, the period of time within which securities may be deposited pursuant to the take-over bid or an issuer bid, or any extension thereof, shall not exceed thirty-five days from the date of the take-over bid or an issuer bid.

8. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, securities deposited pursuant to the take-over bid or an issuer bid shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day within which securities may be deposited thereto.

9. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken up by the offeror shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each offeree.

10. Where the offeror making a take-over bid intends to purchase securities in the market his intention shall be set out in the take-over bid circular and, where the take-over bid is made for less than all of the class of securities sought that are owned by offerees, the offeror shall not reduce the number of securities he is bound or willing to take up under paragraphs 8 and 9 by the number of securities purchased in the market.

11. In the case of a take-over bid, where the laws applicable to the company provide for a right of appraisal or acquisition, the offeror shall advise the offeree of his rights of appraisal and whether the offeror intends exercising any right of acquisition he may have.

12. The offeror shall not attach any conditions to the offer except the right to withdraw the offer if,

(*a*) the offerees fail to tender the minimum number of securities the offeror is bound and willing to take up;

(*b*) any undisclosed action prior to the date of the offer or any action subsequent to such date, by a person or company other than the offeror, including a governmental or regulatory authority, or, in the case of a take-over bid, by the offeree company or its directors or senior officers, that results in a material change in the affairs of the company; or

(*c*) the required approval of a governmental or regulatory authority is not obtained prior to the expiration of the offer.

13. Where the take-over bid or issuer bid is made for all of the class of securities sought that are owned by offerees, the offeror shall, at the expiration of thirty-five days from the making of the offer, take up and pay for the securities tendered at that time or abandon his offer.

14. Where the take-over bid is subject to the approval of a governmental or regulatory authority, the time within which the offeror is bound to take up and make payment for the securities under paragraphs 8 and 13 may be extended for a period not exceeding an additional ninety days. R.S.O. 1970, c. 426, s. 82; 1971, c. 31, s. 23, *amended*.

Sale by offeror prohibited

(2) The offeror shall not sell any of the class of the securities that are the subject of the take-over bid during the period of the take-over bid.

Offer increasing take-over bid or issuer bid

(3) Where, during the course of a take-over bid or an issuer bid, the offeror pays or agrees to pay a price for securities higher than the consideration offered through the take-over

bid or issuer bid, the take-over bid or issuer bid shall be deemed to be varied by increasing the consideration to the higher price. *New*.

Notice of variation in take-over bid or issuer bid

90.—(1) Where a significant change has occurred in the information contained in a take-over bid circular or issuer bid circular while the offer is still outstanding or where a take-over bid or an issuer bid has been varied by changing any of its terms, every person or company whose shares have not been taken up and paid for and who has been sent the take-over bid circular or issuer bid circular shall be sent notice of such change or variation and, except where a variation is solely an increase in price, the date of the take-over bid or issuer bid shall, for the purposes of section 89, be deemed to be the date of the sending of the notice of such change or variation.

Idem

(2) A notice of variation shall advise the offeree of his rights under paragraph 4 of subsection 1 of section 89. *New*.

Variation of terms of take-over bid or issuer bid

(3) Where the terms of a take-over bid or an issuer bid are varied before the expiration thereof by increasing the consideration offered for the securities, the offeror shall pay such increased consideration to each offeree whose securities are taken up and paid for pursuant to the take-over bid or issuer bid, whether or not such securities have been taken up by the offeror before the variation of the take-over bid or issuer bid. R.S.O. 1970, c. 426, s. 84, *amended*.

Follow-up offers

91.—(1) Where a take-over bid is effected without compliance with section 89 in reliance on the exemption in clause *c* of subsection 2 of section 88, if there is a published market in the class of securities acquired and the value of the consideration paid for any of the securities acquired exceeds the market price at the date of the relevant agreement plus reasonable brokerage fees or other commissions, the offeror shall within 180 days after the date of the first of the agreements comprising the take-over bid, offer to purchase all of the additional securities of the same class owned by security holders, the last registered address of whom is in Ontario or in a uniform act province, at and for a consideration per security at least equal in value to the greatest consideration paid under any such agreements, and that offer shall be a take-over bid for purposes of this Part.



True target companies

(2) Where a take-over bid, including a take-over bid exempted from the requirements of this Part under subsection 2 of section 88,

(*a*) results in the acquisition by the offeror of the power or authority to control the business or affairs of the offeree company and, in consequence thereof, the offeror acquires the indirect power or authority to control the business or affairs of another company that is not a private company, herein called the "true target company"; and

(*b*) forms, to the knowledge of the offeror, part of a series of transactions initiated by a present or former holder of securities of the true target company who formerly had the power or authority to control the business or affairs of the true target company, the principal purpose of which was to permit the indirect sale of some or all of his securities of the true target company in a manner that would avoid the application of subsection 1,

the take-over bid shall, for the purposes of subsection 1, be deemed to constitute a take-over bid for securities of the true target company effected without compliance with section 89 in reliance on the exemption in clause *c* of subsection 2 of section 88, at a consideration per security equal to the value per security of the true target company received directly or indirectly by the security holder as a consequence of the series of transactions initiated by him.

Premium prohibited

(3) Subject to any decision of the Commission under section 99, where a take-over bid or an issuer bid is made, all holders of the same class of securities shall be offered the same consideration and no collateral agreement with any such holders shall have the effect, directly or indirectly, of offering such holders a consideration of greater value for their securities than that offered to the other holders of the same class of securities. *New.*

Sending by mail

92. A take-over bid, a varied take-over bid, an issuer bid or a varied issuer bid shall be communicated to each offeree by prepaid mail, by personal delivery or in such other manner as the Director may approve and shall be deemed conclusively to have been dated as of the date on which it was mailed, delivered or otherwise communicated. R.S.O. 1970, c. 426, s. 83, *amended*.

Consideration in cash

93. Where a take-over bid or an issuer bid provides that the consideration for the securities deposited pursuant thereto is to be paid in cash or partly in cash, the offeror shall make adequate arrangements to ensure that the required funds are available to effect payment in full for all securities owned by offerees that the offeror has offered to purchase pursuant to the take-over bid. R.S.O. 1970, c. 426, s. 85.

94.—(1) A take-over bid circular shall form part of or accompany a take-over bid. Take-over bid circular

(2) Every take-over bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations. Content

(3) Where a take-over bid provides that the consideration for the securities of the offeree company is to be, in whole or in part, securities of an issuer, the take-over bid circular shall contain the additional information prescribed by the regulations. R.S.O. 1970, c. 426, s. 86, *amended*. Consideration in securities

95.—(1) An issuer bid circular shall form part of or accompany an issuer bid. Issuer bid circular

(2) Every issuer bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations. Contents

(3) Where an issuer bid provides that the consideration for the securities is to be, in whole or in part, other securities of the issuer the issuer bid circular shall contain the additional information prescribed by the regulations. *New*. Consideration in securities

96.—(1) The board of directors of an offeree company shall send a directors' circular to each offeree not later than ten days from the date of the take-over bid prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (1), *amended*. Directors' circular

(2) The board of directors may include in a directors' circular a recommendation to accept or to reject a take-over bid if it sees fit to do so. *New*. Recommendation by board

(3) An individual director or officer may recommend to the offerees acceptance or rejection of the take-over bid made to such offerees if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (4), *amended*. Recommendation by individual director

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending a director's circular, advise the offerees of this fact and may advise them not to tender their securities until further communication is received from the directors. R.S.O. 1970, c. 426, s. 87 (2), *amended*. Advising of consideration

(5) Where the board of directors sends a communication under subsection 4, it shall communicate the recommendation Advising of decision of directors

or the decision not to make a recommendation to the offerees at least seven days prior to the expiry of the offer. R.S.O. 1970, c. 426, s. 87 (3), *amended*.

Service

(6) All communications required or permitted by this section shall be sent to each offeree by prepaid mail to his latest address as shown on the books of the offeree company. R.S.O. 1970, c. 426, s. 87 (5).

Circulation of recommendation of individual director

(7) Where an individual director or officer submits a recommendation prepared in accordance with subsection 3 to the board of directors prior to the board of directors sending the directors' circular required by subsection 1, or the further communication permitted by subsection 5, the board of directors shall send a copy of the recommendation of the individual director or officer to the offerees together with the circular or further communication. *New*.

Approval of circulars

97.—(1) Where a take-over bid is made by or on behalf of an issuer, the contents of the take-over bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 89 (1), *amended*.

Idem

(2) Where a take-over bid is made by or on behalf of an issuer, the take-over bid circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 93.

Idem

(3) The contents of a directors' circular shall be approved and the delivery thereof authorized by the directors of the offeree company. R.S.O. 1970, c. 426, s. 89 (2), *amended*.

Idem

98. The issuer bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. *New*.

Applications to the Commission

99. Upon an application by an interested person or company, the Commission may, subject to such terms and conditions as it may impose,

(*a*) decide that an offeror shall not be obligated to comply with subsection 1 of section 91 where the Commission finds that the offeror will not or did not acquire through the offer the power or authority to control the business or affairs of the offeree company;

(*b*) where the Commission is satisfied that the market price of securities of any class determined in accordance with the regulations, by reference to the price of such securities as established by trades on a published market was affected by an anticipated take-over bid or by improper manipulation, determine the market price of such securities at any date, such determination to be based on a finding by the Commission as to the price at which a holder of securities of that class could reasonably have expected to dispose of his securities immediately prior to the relevant date excluding any change in price reasonably attributable to the anticipated take-over bid or to the improper manipulation;

(*c*) decide for purposes of section 91 that a consideration proposed to be offered by an offeror is, or is not, at least equal in value to the greatest consideration paid under the relevant agreements;

(*d*) decide for the purposes of section 91 that a collateral agreement or arrangement with a selling security holder is made for reasons other than to increase the value of the consideration paid to him for his securities and may be entered into notwithstanding that section; and

(*e*) exempt any person or company from any requirements of this Part where in its opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 90, *amended*.

Naming of offeror

100. The identity of the offeror shall be disclosed in a take-over bid circular. 1971, c. 31, s. 27, *amended*.

PART XX

INSIDER TRADING AND SELF-DEALING

Interpretation

101.—(1) In this Part,

(*a*) "mutual fund" means, except in section 107, a mutual fund that is a reporting issuer;

(*b*) "related mutual funds" includes more than one mutual fund under common management;

(*c*) "related person or company" in relation to a mutual fund means a person in whom, or a company

in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of this Part from making any investment.

Idem

(2) For the purpose of this Part,

(*a*) any issuer in which a mutual fund holds in excess of 10 per cent of the voting securities or in which the mutual fund and related mutual funds hold in excess of 20 per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds;

(*b*) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other transferable option relates; and

(*c*) for the purpose of reporting under section 102 or 103, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent. R.S.O. 1970, c. 426, s. 109, *amended*.

Report

102.—(1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

Idem

(2) A person or company who has filed or is required to file a report under this section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, if he was an insider of the reporting issuer at any time during such month, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during said month giving such details of each transaction as may be required by the regulations. R.S.O. 1970, c. 426, s. 110 (1, 2), *amended*.

(3) A person or company who becomes an insider of a reporting issuer by reason of subsection 8 or 9 of section 1 shall file the reports required by subsections 1 and 2 of this section for the previous six months or such shorter period that he was a director or officer of the reporting issuer within ten days after the end of the month that the issuer became an insider of a reporting issuer or the reporting issuer became an insider of another reporting issuer as the case may be. *New.* Idem

103.—(1) Where a person or company becomes the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding, through purchases effected through a take-over bid or issuer bid exempted from the requirements of Part XIX by subsection 2 or subsection 3 of section 88, such person or company shall file a report as of the day on which he acquired the ownership within three days of acquiring such 20 per cent ownership. Report of offeror

(2) A person or company who is the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding shall, within three days of purchasing further voting securities carrying an additional 5 per cent of the voting rights, file a report as of the day on which he acquired an additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent. Idem

(3) Where the facts required to be reported by this section are identical to those required under section 102, a separate report under section 102 is not required. 1971, c. 31, s. 33, *amended*. Idem

104. No insider of a reporting issuer shall transfer or cause to be transferred any securities of the reporting issuer into the name of an agent, nominee or custodian without delivering to the Commission a report of such transfer in accordance with the regulations except for a transfer for the purpose of giving collateral for a *bona fide* debt. *New.* Report of transfer by insider



105. Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that they are beneficially owned by an insider and that the insider has failed to file a report of such ownership with the Commission as required by this Part, the person or company shall file a report in Report of transfer by insider

accordance with the regulations except where the transfer was for the purpose of giving collateral for a *bona fide* debt. *New.*

Interpretation

106. For the purposes of sections 107, 108, 109, 110 and 111,

(*a*) "investment" means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company;

(*b*) a person or company or a group of persons or companies has a significant interest in an issuer, if,

(i) in the case of a person or company, he or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or

(ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the outstanding shares or units of the issuer;

(*c*) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than 20 per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by him as underwriter in a distribution of such securities but such exclusion ceases to have effect on completion or cessation of the distribution by him;

(*d*) where a person or company or group of persons or companies owns beneficially, directly or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. *New.*

Loans of mutual funds in Ontario

107.—(1) No mutual fund in Ontario shall knowingly make an investment by way of loan to,

(*a*) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;

(*b*) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.

Investments of mutual funds, etc.

(2) No mutual fund in Ontario shall knowingly make an investment,

(*a*) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

(*b*) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or

(*c*) in an issuer in which,

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

Divesting of prohibited loans and investments

(3) No mutual fund in Ontario or its management company or its distribution company shall knowingly hold an investment made after the coming into force of this Act that is an investment described in this section. *New.*

Indirect investment

108. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 107 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 107 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. *New.*

Relieving orders

109. Upon an application of an interested person or company, the Commission may, where it is satisfied,

(*a*) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or

(*b*) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that section 107 or 108 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. *New.*

Exception to s. 106 (*d*)

110. Notwithstanding clause *d* of section 106, a mutual fund is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. *New.*

Fees on investment

111.—(1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director.

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to the mutual fund. *New.* Relieving orders

112.—(1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Standard of care for management of mutual fund

(2) For the purposes of subsection 1, a person or company is responsible for the management of a mutual fund if he has legal power or right to control the mutual fund or if in fact he is able to do so. *New.* Idem

113.—(1) Every management company shall file a report prepared in accordance with the regulations of, Filing by management companies

(*a*) every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(*b*) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;

(*c*) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and

(*d*) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs.

(2) The Commission may, upon the application of the management company of a mutual fund and where it is Relieving orders

of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to any transaction or class of transactions. *New.*

"responsible person" defined

114.—(1) In this section, "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

Interest of manager in investment portfolio

(2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to,

(*a*) invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase;

(*b*) purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager; or

(*c*) make a loan to a responsible person or an associate of a responsible person or the portfolio manager.

Exemption of portfolio managers on terms and conditions

(3) Where the Commission determines that a portfolio manager or a class of portfolio managers is subject to regulations, imposed by a self-regulatory organization, to substantially the same effect as the requirements set out in subsection 2, the Commission may, subject to such terms and conditions as the Commission may impose, exempt the portfolio manager or class of portfolio managers from the requirements of subsection 2. *New.*

Trades by mutual fund insiders

115. No person or company who has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by a portfolio manager shall purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for a client by a portfolio manager include securities of that issuer and where the information is used by the person or company for his or its direct benefit or advantage. *New.*

Publication of summaries of reports

116. The Commission shall summarize in or as a part of a monthly periodical available to the public on payment of a reasonable fee the information contained in every report filed in compliance with this Part. R.S.O. 1970, c. 426, s. 111 (2).

Filing in other jurisdiction

117.—(1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Part, the filing requirements of this Part may be complied with by filing the reports required by the laws of such jurisdiction manually signed or certified in accordance with the regulations. *New.*

Exemptions by order of Commission

(2) Subject to subsection 1, the Commission may,

(*a*) upon the application of an interested person or company,

(i) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or

(ii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing; or

(*b*) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company, class of persons or companies or class of transactions from the requirements of this Part. R.S.O. 1970, c. 426, s. 116 (1), *amended.*

PART XXI

ENFORCEMENT

Offences, general

118.—(1) Every person or company who,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 426, s. 137 (1-3), *amended*.

Consent of Minister

119. No proceedings under section 118 shall be instituted except with the consent or under the direction of the Minister. R.S.O. 1970, c. 426, s. 138 (1).

Information containing more than one offence

120. An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1970, c. 426, s. 139.

Execution of warrant issued in another province

121.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant

for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisidction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof. R.S.O. 1970, c. 426, s. 149.

Order for compliance

122.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court for an order,

(*a*) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and

(*b*) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and upon the application the judge may make such order, or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1. R.S.O. 1970, c. 426, s. 143, *amended*.

Order to cease trading

123.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of any securities for such period as is specified in the order. R.S.O. 1970, c. 426, s. 144 (1).

Idem

(2) The Commission may issue a cease trading order under subsection 1 notwithstanding the delivery of a report to it pursuant to subsection 3 of section 74. *New.*

Temporary order

(3) No order shall be made under subsection 1 or 2 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, which shall not be for longer than fifteen days from the date of the making thereof, but the order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period. R.S.O. 1970, c. 426, s. 144 (2), *amended.*

Commission's discretion to remove exemptions

124.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that any or all of the exemptions contained in sections 34, 71, 72 and 88 do not apply to the person or company named in the order.

Temporary order and hearing

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall not be for longer than fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded.

Notice

(3) Notice of a temporary order made under subsection 2 shall be given forthwith together with the notice of the hearing under subsection 2 to every person or company who in the opinion of the Commission is directly affected thereby. R.S.O. 1970, c. 426, s. 19 (5-7), *amended.*

Limitation period

125.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the

knowledge of the Commission. R.S.O. 1970, c. 426, s. 138 (2, 3), *amended*.

PART XXII

CIVIL LIABILITY

Liability for misrepresentation in prospectus

126.—(1) Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution or distribution to the public shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against,

(*a*) the issuer or a selling security holder on whose behalf the distribution is made;

(*b*) each underwriter of the securities who is required to sign the certificate required by section 58;

(*c*) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(*d*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(*e*) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses *a* to *d*,

or, where the purchaser purchased the security from a person or company referred to in clause *a* or *b* or from another underwriter of the securities, he may elect to exercise a right of rescission against such person, company or underwriter, in which case he shall have no right of action for damages against such person, company or underwriter.

Defence

(2) No person or company is liable under subsection 1 if he proves that the purchaser purchased the securities with knowledge of the misrepresentation.

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection 1 if he proves,

(*a*) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forth-

with gave reasonable general notice that it was so filed;

(*b*) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;



(*c*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(*d*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his report, opinion or statement, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(*e*) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he had reasonable grounds to believe and did believe that the statement was true.

Expert's report

(4) No person or company, other than the issuer or selling security holder, is liable under subsection 1 with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless such person or company,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Non-expert's report

(5) No person or company, other than the issuer or selling security holder, is liable under subsection 1 with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Limitation re underwriters

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him.

Limitation in action for damages

(7) In an action for damages pursuant to subsection 1, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection 1 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from

any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

Limitation re amount recoverable

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

No derogation of rights

(10) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1970, c. 426, s. 142, *amended*.

Liability for misrepresentation in circular

127.—(1) Where a take-over bid circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

(*a*) every person who at the time the circular was signed was a director of the offeror;

(*b*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(*c*) each person who signed a certificate in the circular other than the persons included in clause *a*.

Idem

(2) Where a directors' circular or a director's or officer's circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and has a right of action for damages against every director or officer who signed the circular.

Idem

(3) The provisions of subsection 1 apply *mutatis mutandis* where an issuer bid circular contains a misrepresentation.

Defence

(4) No person or company is liable under subsection 1, 2 or 3 if he proves that the offeree had knowledge of the misrepresentation.

Idem

(5) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 if he proves,

(*a*) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;

(*b*) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;



(*c*) that, with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(*d*) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert, or

(ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular; or

(*e*) that, with respect to a false statement purporting to be a statement made by an official person or

contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he had reasonable grounds to believe and did believe that the statement was true.

Idem

(6) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Idem

(7) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection 1, 2 or 3 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

Limitation of damages

(9) In an action for damages pursuant to subsection 1, 2 or 3 based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation.

(10) Where the offeror, Deemed take-over bid circular or issuer bid circular

(*a*) in a take-over bid exempted from the provisions of Part XIX by clause *a* of subsection 2 of section 88; or

(*b*) in an issuer bid exempted from the provisions of Part XIX by clause *c* of subsection 3 of section 88,

is required by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made to file with it or to deliver to offerees a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, sent to the offerees as required by Part XIX.

(11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the offeree may have at law. 1971, c. 31, ss. 29, 45, *amended*. No derogation of rights

128. In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 126 and 127, the standard of reasonableness shall be that required of a prudent man in the circumstances of the particular case. *New*. Standard of reasonableness

129. An offeror who, Liability for failure to make follow-up offer or to take up securities

(*a*) does not make the offer to purchase required to be made by subsection 1 of section 91 at a consideration having a value at least equal to that required thereby; or

(*b*) does not take up securities duly deposited under the offer referred to in clause *a*,

is liable to pay to the security holders entitled to receive the offer to purchase, or whose duly deposited securities were not taken up, a consideration per security equal in value to the minimum consideration at which the offer is required by that subsection to be made, or to the excess thereof over the value of the consideration actually offered, together with damages, if any. *New*.

130. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 1 of section 70 or an offeree to whom a take-over bid circular or issuer bid Liability of dealer or offeror

circular was required to be communicated but was not communicated in compliance with section 92 has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

Liability of vendor and informer where material fact or change undisclosed

131.—(1) Every person or company in a special relationship with a reporting issuer who sells the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person in a special relationship with the reporting issuer who, directly or indirectly, informs the vendor of the material fact or material change other than in the necessary course of business is liable to compensate the purchaser of the securities for damages as a result of the trade unless,

(*a*) the vendor or informer, as the case may be, had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(*b*) the material fact or material change was known or ought reasonably to have been known to the purchaser; or

(*c*) the vendor or informer, as the case may be, proves that the vendor did not make use of knowledge of the material fact or material change in selling the securities.

Liability of purchaser and informer where material fact or change undisclosed

(2) Every person or company in a special relationship with a reporting issuer who purchases the securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person in a special relationship with the reporting issuer who, directly or indirectly, informs the purchaser of the material fact or material change other than in the necessary course of business is liable to compensate the vendor of the securities for damages as a result of the trade unless,

(*a*) the purchaser or informer, as the case may be, had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(*b*) the material fact or material change was known or ought reasonably to have been known to the vendor; or

(*c*) the purchaser or informer, as the case may be, proves that the purchaser did not make use of

knowledge of the material fact or material change in purchasing the securities.

Idem

(3) Any person or company who has access to information concerning the investment program of a mutual fund in Ontario or the investment portfolio managed for a client by a portfolio manager or by a registered dealer acting as a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by the portfolio manager or registered dealer include securities of that issuer is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale.

Accountability for gain

(4) Every,

(*a*) vendor or informer referred to in subsection 1; and

(*b*) purchaser or informer referred to in subsection 2,

who is also an insider of the reporting issuer, or who is an associate or affiliate of such insider, is, in addition to the liability imposed by subsection 1 or 2, accountable to the reporting issuer for any benefit or advantage received or receivable by the insider or associate or affiliate, as the case may be. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

Liability joint and several

(5) The liability of,

(*a*) the vendor and any informer under subsection 1; and

(*b*) the purchaser and any informer under subsection 2,

is joint and several.

Measure of damages

(6) In assessing damages under subsection 1 or 2, the court shall consider,

(*a*) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; or

(*b*) if the plaintiff is a vendor, the average market price of the security in the twenty trading days

following general disclosure of the material fact or material change less the price that he received for the security,

but the court may instead consider such other measures of damages as may be relevant in the circumstances.

Interpretation

(7) For the purposes of this section, a person or company is in a special relationship with a reporting issuer where,

(*a*) the person or company is an insider or an affiliate of the reporting issuer;

(*b*) the person is a director, officer or employee of the reporting issuer or of a company that is an insider or an affiliate of the reporting issuer;

(*c*) the person or company has engaged, is engaging in or proposes to engage in any business or professional activities with or on behalf of the reporting issuer and thereby has acquired knowledge of the material fact or material change; or

(*d*) the person or company is an associate of the reporting issuer or of any person or company referred to in clause *a*, *b* or *c*. *New.*

Action by Commission on behalf of issuer

132.—(1) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection 1 or 2 of section 131 or is at the time of the application a security holder of the reporting issuer, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection 4 of section 131; and

(*b*) either,

(i) the reporting issuer has refused or failed to commence an action under section 131 within sixty days after receipt of a written request from the Commission or such person or company so to do, or

(ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 131,

make an order, upon such terms as to security for costs and otherwise as to the Judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection 4 of section 131.

Action by Commission on behalf of mutual fund

(2) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection 3 of section 131 or is at the time of the application a security holder of the mutual fund, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection 3 of section 131; and

(*b*) the mutual fund has either,

(i) refused or failed to commence an action under subsection 3 of section 131 within sixty days after receipt of a written request from the Commission or the person or company so to do, or

(ii) failed to prosecute diligently an action commenced by it under subsection 3 of section 131,

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 3 of section 131.

Costs

(3) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a board of directors of a reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as

the case may be, shall be paid by the reporting issuer, if he is satisfied that the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Action by Commission on behalf of security holder of the reporting issuer

(4) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that,

(*d*) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and

(*e*) the continuance of the action is *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Idem

(5) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by the Commission, the trial judge or a judge of the High Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

Idem

(6) In determining whether an action or its continuance is *prima facie* in the best interests of a reporting issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action.

(7) Notice of every application under subsection 1 or 2 shall be given to the Commission, the reporting issuer, or the mutual fund, as the case may be, and each of them may appear and be heard thereon. Notice of application

(8) Every order made under subsection 1 or 2 requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action. Order to co-operate

(9) An appeal lies to the Supreme Court from any order made under this section. *New.* Appeal

133.—(1) If subsection 1 of section 38 applies to a contract and such subsection is not complied with, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased. Rescission of contract

(2) If clause *c* of subsection 1 of section 35 applies to a contract and a registered dealer has failed to comply with such subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract. R.S.O. 1970, c. 426, s. 71 (1, 2), *amended.* Idem

(3) For the purpose of subsection 2, a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail. *New.* Service

(4) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 35 or 38 is upon the registered dealer. Onus

Limitation period

(5) No action respecting a rescission shall be commenced under this section after the expiration of a period of ninety days from the date of the mailing or delivering the notice under subsection 1 or 2. R.S.O. 1970, c. 426, s. 71 (3, 4), *amended*.

Rescission of purchase of mutual fund security

134.—(1) Every purchaser of a security of a mutual fund in Ontario may, where the amount of the purchase does not exceed the sum of $50,000, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan but, subject to subsection 5, the amount the purchaser is entitled to recover on exercise of this right to rescind shall not exceed the net asset value of the securities purchased, at the time the right is exercised.

Idem

(2) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection 1 for rescinding a purchase made under a contractual plan.

Notice

(3) The notice mentioned in subsection 1 shall be in writing, and may be given by prepaid mail, telegram or other means.

Service

(4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Reimbursement

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of rescission was given. *New*.

Limitation periods

135. Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,

(*a*) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(*b*) in the case of any action, other than an action for rescission, the earlier of,

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action. *New.*

PART XXIII

GENERAL PROVISIONS

Admissibility in evidence of certified statements

136. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 426, s. 148, *amended*.

Filing and inspection of material

137.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission.

Idem

(2) Notwithstanding subsection 1, the Commission may hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection. *New.*

Immunity of Commission and officers

138.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any direction, decision, order, ruling or other requirement made or given under this Act or the regulations. R.S.O. 1970, c. 426, s. 145, *amended*.

Liability of crown

R.S.O. 1970, c. 365

(3) Subsection 1 does not, by reason of subsections 2 and 3 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection 1 to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. *New*.

Regulations

139. The Lieutenant Governor in Council may make regulations,

1. prescribing categories for persons and companies and the manner of allocating persons and companies to categories, and prescribing the form and content of prospectuses, preliminary prospectuses, *pro forma* prospectuses and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;

2. designating mutual funds or a class or classes thereof as private mutual funds;

3. designating banking transactions for the purposes of subparagraph iv of paragraph 43 of subsection 1 of section 1;

4. prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;

5. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

6. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as,

    i. investment dealer, unless he is a member of the Ontario District of the Investment Dealers' Association of Canada,

    ii. broker, unless he is a member of a stock exchange in Ontario recognized by the Commission,

    iii. broker-dealer, unless he is a member of the Broker-Dealers' Association of Ontario;

7. regulating the listing and trading of securities and records relating thereto;

8. governing the furnishing of information to the public or to the Commission by a registrant in connection with securities or trades therein;

9. regulating the trading of securities other than on a stock exchange recognized by the Commission;

10. governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;

11. respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

12. respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salesmen of shares or units of a mutual fund;

13. designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;

14. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the

Commission and other fees in connection with the administration of this Act and the regulations;

15. prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

16. prescribing the practice and procedure of investigations under sections 11 and 13;

17. prescribing the forms for use under this Act and the regulations;

18. prescribing trades or securities, in addition to the trades and securities referred to in section 34, in respect of which registration shall not be required;

19. prescribing trades or securities, referred to in section 34 in respect of which there shall cease to be exemption from registration;

20. prescribing trades or securities, in addition to the trades and securities referred to in sections 71 and 72, in respect of which section 52 does not apply;

21. prescribing trades or securities in respect of which sections 52 and 61 shall be applicable notwithstanding sections 71 and 72;



22. exempting any seller or class of sellers from the requirements of subclauses i and ii of clause *b* of subsection 7 of section 71;

23. prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

24. prescribing the practice and procedure by which the Commission recognizes exempt purchasers under paragraph 4 of subsection 1 of section 34;

25. exempting any category of registered advisers from the provisions of section 39 or varying the provisions of section 39, as they apply to any category of registered advisers;

26. prescribing the information required or permitted to be distributed under subsection 2 of section 64;

27. respecting the matters referred to in clause *h* of subsection 2 of section 60, and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;

28. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;

29. prescribing the form and content of the reports to be filed under Part XX;

30. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Part XIX or Part XX;

31. prescribing the form and content of a take-over bid circular, issuer bid circular, directors' circular and a director's or officer's circular required by Part XIX;

32. prescribing a penalty for the early redemption of shares or units of a mutual fund;

33. prescribing the form and content of proxies, information circulars and reports required by Parts XVII and XVIII;

34. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company. R.S.O. 1970, c. 426, s. 147; 1971, c. 31, s. 46, *amended*.

Commission's discretion to revoke or vary its decision

140. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations. *New*.

Continuation of registration

141. Every registration made and receipt for a prospectus issued under *The Securities Act*, being chapter 426 of the

Revised Statutes of Ontario, 1970 and in effect immediately before this Act comes into force, continues in the same manner as if made or issued under this Act. *New.*

Repeals

142. The following are repealed:

1. *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970.

2. *The Securities Amendment Act, 1971*, being chapter 31.

3. *The Securities Amendment Act, 1973*, being chapter 11.

4. Section 55 of *The Government Reorganization Act, 1972*, being chapter 1.

Commencement

143.—(1) This Act, except clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71 come into force on the day eighteen months after the coming into force of this Act, and, until that date, the exemptions set out in clauses *a*, *c*, *d*, *l* and *p* of subsection 1 of the said section 71 are available only where each purchaser takes the securities for investment only and not with a view to resale, distribution or distribution to the public.

Short title

144. The short title of this Act is *The Securities Act, 1978*.

An Act to revise The Securities Act

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

The Hon. L. Grossman
Minister of Consumer and
Commercial Relations

(Reprinted as amended by the Administration of Justice Committee)

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An Act to revise The Securities Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

TORONTO
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An Act to revise The Securities Act

HER MAJESTY, by and with advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act, Interpretation

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;
2. "associate", where used to indicate a relationship with any person or company means,
   i. any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
   ii. any partner of that person or company,
   iii. any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
   iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person;
3. "Commission" means the Ontario Securities Commission;
4. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

5. "contract" includes a trust agreement, declaration of trust or other similar instrument;

6. "contractual plan" means any contract or other arrangement for the purchase of shares or units of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

7. "dealer" means a person or company who trades in securities in the capacity of principal or agent;

8. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

9. "Director" means the Director or any Deputy Director of the Commission;

10. "director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

11. "distribution", where used in relation to trading in securities, means,

    i. a trade in securities of an issuer that have not been previously issued,

    ii. a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

    iii. a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20 per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

iv. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this Act if those securities continue on the day this Act comes into force to be owned by or for that underwriter, so acting,

v. a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the coming into force of this Act, if the trade takes place during that eighteen months,

and after the coming into force of subsections 4, 5, 6 and 7 of section 71, includes a distribution as therein referred to, and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and "distribute", "distributed" and "distributing" have a corresponding meaning;

12. "distribution company" means a person or company distributing securities under a distribution contract;

13. "distribution contract" means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund;

14. "distribution to the public", where used in relation to trading in securities, means a distribution that is made for the purpose of distributing to the public securities issued by an issuer, whether such trades are made directly or indirectly to the public through an underwriter or otherwise;

15. "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy;

16. "individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organiza-

tion, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative;

17. "insider" or "insider of a reporting issuer" means,

    i. every director or senior officer of a reporting issuer,

    ii. every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,

    iii. any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than 10 per cent of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and

    iv. a reporting issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

18. "issuer" means a person or company who has outstanding, issues or proposes to issue, a security;

19. "management company" means a person or company who provides investment advice, under a management contract;

20. "management contract" means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration;

21. "material change" where used in relation to the affairs of an issuer means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

22. "material fact" where used in relation to securities issued or proposed to be issued means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities;

23. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

24. "misrepresentation" means,

    i. an untrue statement of material fact, or

    ii. an omission to state a material fact;

25. "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

26. "mutual fund in Ontario" means a mutual fund that is a reporting issuer or that is organized under the laws of Ontario, but does not include a private mutual fund;

27. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

28. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

29. "portfolio manager" means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;

30. "portfolio securities", where used in relation to a mutual fund, means securities held or proposed to be purchased by the mutual fund;

31. "private company" means a company in whose constating document,

i. the right to transfer its shares is restricted,

ii. the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be, shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and

iii. any invitation to the public to subscribe for its securities is prohibited;

32. "private mutual fund" means a mutual fund that is,

i. operated as an investment club, where,

(*a*) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public;

(*b*) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees; and

(*c*) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations, or

ii. administered by a trust company registered under *The Loan and Trust Corporations Act* and consists of,

R.S.C. 1952, c. 148

(*a*) a pooled fund maintained solely to serve registered retirement savings plans, registered home ownership savings plans, or other savings plans registered under the *Income Tax Act* (Canada);

R.S.O. 1970, c. 254

(*b*) a common trust fund as defined by subsection 1 of section 85 of *The Loan and Trust Corporations Act*; or

(*c*) a pooled fund maintained by a trust company in which moneys belonging to various estates and trusts in its care are commingled, with the authority of the settlor, testator or trustee thereof, for the purpose of facilitating investment where no general solicitations are made with a view to the sale of participations in the pooled fund;

33. "promoter" means,

i. a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

ii. a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

34. "proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;

35. "register" means register under this Act, and "registered" has a corresponding meaning;

36. "registrant" means a person or company registered or required to be registered under this Act;

37. "regulations" means the regulations made under this Act;

38. "reporting issuer" means an issuer,

i. that has issued voting securities on or after the 1st day of May, 1967 in respect of which a prospectus was filed and a receipt therefor obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,

ii. that has filed a prospectus and obtained a receipt therefor under this Act or that has filed a securities exchange take-over bid circular under this Act,

iii. any of whose securities have been at any time since the coming into force of this Act listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

R.S.O. 1970, c. 53

iv. to which *The Business Corporations Act* applies and which, for the purposes of that Act, is offering its securities to the public, or

v. that is the company whose existence continues following the exchange of securities of a company by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(*a*) a statutory amalgamation or arrangement; or

(*b*) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,

where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months;

39. "salesman" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

40. "security" includes,

i. any document, instrument or writing commonly known as a security,

ii. any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,

iii. any document constituting evidence of an interest in an association of legatees or heirs,

iv. any document constituting evidence of an option, subscription or other interest in or to a security,

v. any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than a contract of insurance issued by an insurance company licensed under *The Insurance Act* and an evidence of deposit issued by a bank to which the *Bank Act* (Canada) applies or by a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, cc. 224, 254 R.S.C. 1970, c. B-1

vi. any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under *The Insurance Act* which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,

vii. any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,

viii. any certificate of share or interest in a trust, estate or association,

ix. any profit-sharing agreement or certificate,

x. any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

xi. any oil or natural gas royalties or leases or fractional or other interest therein,

xii. any collateral trust certificate,

xiii. any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*,

R.S.O. 1970, c. 226

xiv. any investment contract, other than an investment contract within the meaning of *The Investment Contracts Act*,

xv. any document constituting evidence of an interest in a scholarship or educational plan or trust, and

xvi. any commodity futures contract or any commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under *The Commodity Futures Act, 1978* or the form of which is not accepted by the Director under that Act,

1978, c. ...

whether any of the foregoing relate to an issuer or proposed issuer;

41. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of an issuer, including any individual referred to in subparagraph i;

42. "trade" or "trading" includes,

i. any sale or disposition of a security for valuable consideration, whether the terms of

payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subparagraph iv, a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt,

ii. any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,

iii. any receipt by a registrant of an order to buy or sell a security,

iv. any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subparagraph iii of paragraph 11 for the purpose of giving collateral for a *bona fide* debt, and

v. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

43. "underwriter" means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

i. a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,

ii. a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

iii. a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

iv. a bank to which the *Bank Act* (Canada) applies with respect to the securities described in paragraph 1 of subsection 2 of section 34 and to such banking transactions as are designated by the regulations; R.S.C. 1970, c. B-1

44. "voting security" means any security other than a debt security of an issuer carrying a voting right

either under all circumstances or under some circumstances that have occurred and are continuing.

Affiliated companies

(2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.

Controlled companies

(3) A company shall be deemed to be controlled by another person or company or by two or more companies if,

(*a*) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and

(*b*) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Subsidiary companies

(4) A company shall be deemed to be a subsidiary of another company if,

(*a*) it is controlled by,

(i) that other, or

(ii) that other and one or more companies each of which is controlled by that other, or

(iii) two or more companies each of which is controlled by that other; or

(*b*) it is a subsidiary of a company that is that other's subsidiary.

Beneficial ownership of securities

(5) A person shall be deemed to own beneficially securities beneficially owned by a company controlled by him or by an affiliate of such company.

Idem

(6) A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

Insider of mutual fund

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company or distribution company shall be deemed to be an insider of the mutual fund.

Issuer as insider of reporting issuer

(8) Where an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the reporting issuer for the pre-

vious six months or for such shorter period that he was a director or senior officer of the issuer.

Reporting issuer as insider of other reporting issuer

(9) Where a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer shall be deemed to have been an insider of the first-mentioned reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the second-mentioned reporting issuer. R.S.O. 1970, c. 426, s. 1, *amended*.

PART I

THE COMMISSION

Commission

2.—(1) The Commission is continued and is responsible for the administration of this Act.

Appointment

(2) The Commission shall be composed of a Chairman and not more than eight other members, appointed by the Lieutenant Governor in Council, one of whom shall be designated as Vice-Chairman.

Quorum

(3) Two members of the Commission constitute a quorum. R.S.O. 1970, c. 426, s. 2, *amended*.

Chairman and members

3.—(1) The Chairman shall be the chief executive officer of the Commission and shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Commission.

Delegation of powers

(2) The Chairman, Vice-Chairman or any member of the Commission may exercise the powers and shall perform such duties vested in or imposed upon the Commission by this Act or the regulations as are assigned to him by the Commission.

Eligibility to sit on hearing

(3) Where the person who exercises the powers and performs the duties vested in the Commission by sections 11 to 17 pursuant to an assignment under subsection 2, receives the report of an investigation ordered under section 11 and on the basis of such report issues an *ex parte* order or a direction that proceedings be instituted by the Commission under section 26, 69, 123 or 124 such person shall not sit on the hearing required to be held by the Commission except with the written consent of the party directly affected by the proceedings.

Review

(4) Every decision made pursuant to an assignment under subsection 2 is subject to review by the Commission under

section 8 in the same manner as if it had been made by the Director, and the person who made the decision shall not sit on the hearing and review thereof by the Commission. R.S.O. 1970, c. 426, s. 3, *amended*.

PART II

FINANCIAL DISCLOSURE ADVISORY BOARD

Financial Disclosure Advisory Board

4.—(1) The Financial Disclosure Advisory Board established under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970, is continued and shall be composed of not more than five members appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Financial Disclosure Advisory Board shall meet at the call of the Commission.

Duties

(3) The Financial Disclosure Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning the financial disclosure requirements of this Act and the regulations.

Remuneration

(4) The members of The Financial Disclosure Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board. R.S.O. 1970, c. 426, s. 146, *amended*.

PART III

APPOINTMENT OF EXPERTS

Appointment of experts

5.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and

things as is vested in the Commission, and subsections 3 and 4 of section 11 apply *mutatis mutandis*.

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine. R.S.O. 1970, c. 426, s. 13. Payment of experts

PART IV

THE DIRECTOR

6. The Director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission except those referred to in section 8 and sections 11 to 17 and, subject to the direction of the Commission, he is the chief administrative officer of the Commission. R.S.O. 1970, c. 426, s. 4. Director

7. Where, Refunds

(*a*) an application for registration or renewal of registration is abandoned; or

(*b*) a preliminary prospectus or prospectus is withdrawn,

the Director may, upon the application of the person or company who made the application or filed the preliminary prospectus or prospectus, recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or the filing of the preliminary prospectus or prospectus or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund. R.S.O. 1970, c. 426, s. 17.

PART V

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

8.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 25 or refusing to issue a receipt for a prospectus under section 60 and the Commission may within thirty days of the decision notify the Director and any person or company directly Notification of decision

affected of its intention to convene a hearing to review the decision. *New.*

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper. R.S.O. 1970, c. 426, s. 28; 1971, c. 31, s. 5.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2 of this section or subsection 4 of section 3, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. 1973, c. 11, s. 1.

Appeal

9.—(1) Any person or company directly affected by a decision of the Commission, other than a decision under section 73, may appeal to the Supreme Court.

Stay

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal.

Certification of documents

(3) The Secretary shall certify to the Registrar of the Supreme Court,

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

Minister entitled to appear

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. 1973, c. 11, s. 2, *amended*. Further decisions

10.—(1) There shall be a Secretary to the Commission who may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 9; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

(2) Where the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated may exercise all the powers vested in the Secretary by this Act or the regulations. Acting Secretary

(3) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution. *New*. Certification by Secretary

PART VI

INVESTIGATIONS

Investigation order

11.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a trade in securities,

the Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions

promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities or other property are seized under subsection 6, the documents, records, securities or other property shall be made available for inspection and copying by the person or company from whom seized at a mutally convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated. R.S.O. 1970, c. 426, s. 21 (1-8).

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation. R.S.O. 1970, c. 426, s. 21 (9), *amended*.

Report to Minister

12. Where upon the report of an investigation made under section 11 it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to securities,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister. R.S.O. 1970, c. 426, s. 22.

Investigation by order of Minister

13. Notwithstanding section 11, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights, and privileges as a person appointed under section 11. R.S.O. 1970, c. 426, s. 23.

Evidence not to be disclosed

14. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 11 or 13.

Report to Minister

15. Where an investigation has been made under section 11, the Commission may, and, where an investigation has been made under section 13, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. R.S.O. 1970, c. 426, s. 25.

Order to freeze property

16.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b*, *c* or *d* to hold such funds or securities or direct the person or company referred to in clause *a*, *b*, *c* or *d* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 17 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-3, W-10, R.S.O. 1970, cc. 228, 89, 53

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification. R.S.O. 1970, c. 426, s. 26 (1, 2), *amended*.

Application for directions

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions it may impose revoking the direction or consenting to the release of any fund or security. *New*.

Revocation or amendment of direction

Notice to land registry offices

(4) In any of the circumstances mentioned in clause *a*, *b*, *c*, or *d* of subsection 1, the Commission may in writing or by telegram notify any land registrar or mining recorder that proceedings are being or are about to be taken that may affect land or mining claims belonging to the person or company referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate of *lis pendens* or a caution, and the Commission may in writing revoke or modify the notice. R.S.O. 1970, c. 426, s. 26 (3), *amended*.

Appointment of receiver, etc.

17.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;

(*b*) where it is about to make or has made an order under section 123 that trading in securities of an issuer shall cease;

(*c*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities;

(*d*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company; or

(*e*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for the person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or

of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company. R.S.O. 1970, c. 426, s. 27 (1, 2), *amended*.

Ex parte application

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. R.S.O. 1970, c. 426, s. 27 (3), *amended*.

Powers of receiver, etc.

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

Enforcement of order

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Rules of practice

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. R.S.O. 1970, c. 426, s. 27 (4-6), *amended*.

PART VII

AUDITS

Audits by Commission

18.—(1) Notwithstanding anything in sections 19, 20 and 21, the Commission may in writing appoint any person to examine at any time,

(*a*) the financial affairs of a registrant or a reporting issuer; and

(*b*) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Commission.

Access to records

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. R.S.O. 1970, c. 426, s. 33, *amended*.

PART VIII

SELF-REGULATION—GENERALLY

Panel of auditors

19. Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario, shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, district association auditor or association auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years. R.S.O. 1970, c. 426, s. 30, *amended*.

Audits by stock exchange and associations

20.—(1) Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 19 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, district association auditor or association auditor, as the case may be.

(2) The by-laws, rules and regulations of every stock exchange in Ontario recognized by the Commission, the rules and regulations of the Ontario District of the Investment Dealers' Association of Canada and the regulations of the Broker-Dealers' Association of Ontario in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission. R.S.O. 1970, c. 426, s. 31. Audit by-laws subject to approval

21. Every registrant whose financial affairs are not subject to examination under section 20 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditor of the registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe. R.S.O. 1970, c. 426, s. 32. Filing of financial statements of registrants

PART IX

STOCK EXCHANGES

22.—(1) No person or company shall carry on business as a stock exchange in Ontario unless such stock exchange is recognized in writing as such by the Commission. Stock exchanges

(2) The Commission may, where it appears to it to be in the public interest, make any decision, Commission's powers

(*a*) with respect to the manner in which any stock exchange in Ontario carries on business;

(*b*) with respect to any by-law, ruling, instruction, or regulation of any such stock exchange;

(*c*) with respect to trading on or through the facilities of any such stock exchange or with respect to any security listed and posted for trading on any such stock exchange; or

(*d*) to ensure that issuers whose securities are listed and posted for trading on any such stock exchange comply with this Act and the regulations.

Review of decisions of stock exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a stock exchange in Ontario may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director. R.S.O. 1970, c. 426, s. 140.

Record of transactions

23. Every stock exchange in Ontario shall keep a record showing the time at which each transaction on such stock exchange took place and shall supply to any customer of any member of such stock exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation. R.S.O. 1970, c. 426, s. 141.

PART X

REGISTRATION

Registration for trading

24.—(1) No person or company shall,

(*a*) trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

(*b*) act as an underwriter unless the person or company is registered as an underwriter; or

(*c*) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions. R.S.O. 1970, c. 426, s. 6 (1), *amended*.

Termination re salesman

(2) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until notice in writing has been received by the Director from another registered dealer of the employment of the salesman by the other registered dealer and the reinstatement of the registration has been approved by the Director.

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman. R.S.O. 1970, c. 426, s. 6 (4, 5). Non-trading employee

25.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where in the opinion of the Director the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable. R.S.O. 1970, c. 426, s. 7 (1), *amended*. Granting of registration

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities. R.S.O. 1970, c. 426, s. 7 (3). Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. R.S.O. 1970, c. 426, s. 7 (2). Refusal

26.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 8. R.S.O. 1970, c. 426, s. 8, *amended*. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. *New*. Surrender

Subsequent applications

27. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1970, c. 426, s. 9.

Application

28. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. R.S.O. 1970, c. 426, s. 10.

Address for service

29. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1970, c. 426, s. 11.

Further information

30. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director. R.S.O. 1970, c. 426, s. 12, *amended*.

Residence

31.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration or if he is not a resident of Ontario at the date of the application unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer, or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration or is not a resident of Ontario at the date of the application unless at the time of the application he

is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration. R.S.O. 1970, c. 426, s. 14, *amended*.

Notice of changes

32.—(1) Subject to the regulations, every registered dealer shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) (i) any change in the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and, in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem

(2) Subject to the regulations, every registered adviser and underwriter shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) (i) any change in the directors or officers of the registered adviser or underwriter and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) any change in the holders of the voting securities of the registered adviser or underwriter.

Idem

(3) Every registered salesman shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions

(4) The Director may, upon an application of a registrant that is a reporting issuer, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 15, *amended*.

PART XI

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

33. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer or teacher;

(*c*) a registered dealer, or any partner, officer or employee thereof; and

(*d*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*e*) such other persons or companies as are designated by the regulations. R.S.O. 1970, c. 426, s. 18, *amended*.

Exemption of trades

34.—(1) Subject to the regulations, registration is not required in respect of the following trades:

1. A trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada) or by a receiver under *The Judicature Act* or by a liquidator under *The Corporations Act*, *The Business Corporations Act*, or the *Winding-up Act* (Canada), or at a judicial sale. R.S.C. 1970, cc. B-3, W-10 R.S.O. 1970, cc. 228, 89, 53

2. An isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.

3. A trade where the party purchasing as principal, but not as underwriter, is,

   i. a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

   ii. a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

   iii. an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

   iv. Her Majesty in right of Canada or any province or territory of Canada, or

   v. any municipal corporation or public board or commission in Canada.

4. A trade where the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser.

5. A trade where the purchaser purchases as principal, if the trade is in a security which has an aggregate

acquisition cost to such purchaser of not less than $97,000.

6. A trade from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt.

7. A trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt.

8. A trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Director as non-trading employees, either individually or as a class.

9. A trade between a person or company and an underwriter acting as purchaser or between or among underwriters.

10. A trade in a security by a person or company acting solely through an agent who is a registered dealer.

11. The execution of an unsolicited order to purchase or sell through a registered dealer by a bank to which the *Bank Act* (Canada) applies or a trust company registered under *The Loan and Trust Corporations Act* as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company.

R.S.C. 1970, c. B-1
R.S.O. 1970, c. 254

12. A trade by an issuer,

    i. in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

    ii. in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws

of the jurisdiction in which the issuer was incorporated, organized or continued,

iii. in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer.

13. A trade by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie.

14. A trade by an issuer,

i. in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

ii. in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and either,

iii. the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or

iv. the issuer has delivered to the Commission information relating to the securities that is satisfactory to and accepted by the Commission.

15. A trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with,

i. a statutory amalgamation or arrangement, or

ii. a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company.

16. A trade in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part XIX.

17. A trade in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88 or by the Commission under section 99.

18. A trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000.

19. A trade by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment.

20. A trade by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, in which case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers.

21. A trade made by an issuer with a view to the sale of securities of its own issue if solicitations are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

i. each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase, except that subsequent sales to the same pur-

chasers may be carried out if made in compliance with written agreements entered into during that six month period,

ii. each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

(*a*) an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered dealer, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer; or

(*b*) a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

iii. the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

iv. no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this paragraph within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption.

22. A trade in a commodity futures option or a commodity futures contract by a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. ...

23. A trade in respect of which the regulations provide that registration is not required.

Exemption re securities

(2) Subject to the regulations, registration is not required to trade in the following securities:

1. Bonds, debentures or other evidences of indebtedness,

   (*a*) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any foreign country or any political division thereof;

   (*b*) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated;

   (*c*) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company or loan corporation registered under *The Loan and Trust Corporations Act* or an insurance company licensed under *The Insurance Act*;

R.S.C. 1970, c. B-1
R.S.O. 1970, cc. 254, 224

   (*d*) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America; or

R.S.C. 1970, c. B-9

   (*e*) of or guaranteed by the Asian Development Bank or the Inter-American Development Bank, if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America and if, with respect to such securities, such documents, certificates, reports, releases, statements, agreements or other information as may be required by the Commission are filed.

2. Certificates or receipts issued by a trust company registered under *The Loan and Trust Corporations Act* for moneys received for guaranteed investment.

3. Securities issued by a private mutual fund.

4. Negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than $50,000.

5. Mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under *The Mortgage Brokers Act*. R.S.O. 1970, c. 278

6. Securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual.

7. Securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.

8. Securities issued by corporations to which *The Co-operative Corporations Act, 1973* applies. 1973, c. 101

9. Shares of a credit union within the meaning of *The Credit Unions and Caisses Populaires Act, 1976*. 1976, c. 62

10. Securities of a private company where they are not offered for sale to the public.

11. Securities issued and sold by a prospector for the purpose of financing a prospecting expedition.

12. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, where the securities are sold by the prospector or one of the prospectors who staked claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate, and the prospector delivers a copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor.

13. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, if the securities are not offered for sale to the public and are sold to not more than fifty persons or companies.

14. Securities issued by a mining company or a mining exploration company as consideration for mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary.

15. Securities in respect of which the regulations provide that registration is not required. R.S.O. 1970, c. 426, s. 19 (1, 2); 1971, c. 31, s. 3, *amended*.

Trades by trust company R.S.O. 1970, c. 254

(3) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it. *New*.

PART XII

TRADING IN SECURITIES GENERALLY

Confirmation of trade

35.—(1) Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the quantity and description of the security;

(*b*) the consideration;

(*c*) whether or not the registered dealer is acting as principal or agent;

(*d*) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;

(*e*) the date and the name of the stock exchange, if any, upon which the transaction took place;

(*f*) the commission, if any, charged in respect of the trade; and

(*g*) the name of the salesman, if any, in the transaction. R.S.O. 1970, c. 426, s. 67 (1).

Idem

(2) Where a trade is made in a security of a mutual fund, the confirmation shall contain, in addition to the requirements of subsection 1,

(*a*) the price per share or unit at which the trade was effected; and

(*b*) the amount deducted by way of sales, service and other charges.

Idem

(3) Subject to the regulations, where a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall contain in addition to the requirements of subsections 1 and 2,

(*a*) in respect of an initial payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;

(*b*) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges, that is allocated to the payment which is the subject of the confirmation;

(*c*) in respect of an initial purchase made under a contractual plan which permits the deduction of sales, service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases;

(*d*) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the confirmation is sent or delivered. *New*.

Coded identification

(4) For the purposes of clauses *d* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(5) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning. R.S.O. 1970, c. 426, s. 67 (2, 3).

Disclosure by agent

(6) Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the security was bought or sold. R.S.O. 1970, c. 426, s. 67 (4), *amended*.

Order prohibiting calls to residences

36.—(1) The Commission may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to,

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any security or in any class of securities. R.S.O. 1970, c. 426, s. 68 (1), *amended*.

Hearing

(2) The Commission shall not make an order under subsection 1 without giving the person or company or class of persons or companies affected an opportunity to be heard. *New*.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned

where an officer, director or salesman of the person or company calls or telephones on its behalf. R.S.O. 1970, c. 426, s. 68 (3, 4).

Representations prohibited

37.—(1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he or any person or company,

(*a*) will resell or repurchase; or

(*b*) will refund all or any of the purchase price of,

such security.

Future value

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

Listing

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

Application of section

(4) This section does not apply to any representation referred to in subsection 1 made to a person or to a company where the representation is contained in an enforceable written agreement and the security has an aggregate acquisition cost of more than $50,000. R.S.O. 1970, c. 426, s. 69, *amended*.

Where dealer is principal

38.—(1) Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract. R.S.O. 1970, c. 426, s. 70 (1).

Effect of statement

(2) A statement made in compliance with this section or clause *c* of subsection 1 of section 35 that a dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent such dealer from acting as agent in connection with a trade of such security.

Application of section

(3) This section does not apply to trades referred to in subsection 1 of section 34 or to securities referred to in subsection 2 of section 34. R.S.O. 1970, c. 426, s. 70 (3, 4).

Disclosure of financial interest of advisers and dealers

39. Subject to the regulations, every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including,

(*a*) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;

(*b*) any option that any of them may have in respect of such securities, and the terms thereof;

(*c*) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;

(*d*) any financial arrangement relating to such securities that any of them may have with any person or company; and

(*e*) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities. R.S.O. 1970, c. 426, s. 72, *amended*.

Idem

40. Every registered dealer that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it and intended for general circulation shall, in type not less legible than that used in the body of the publication, state whether the registered dealer or any of its officers or directors has at any time during the past twelve months assumed an underwriting liability with respect to such securities or for consideration provided financial advice to the issuer of such securities or whether the registered dealer or any of its officers or directors will receive any fees as a result of the recommended action. *New*.

Publication of names

41. Every registered dealer shall publish the name of every person or company having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the dealer, on all letterheads, circulars and stationery that contain any offer or solicitation respecting a trade in securities or in a preliminary prospectus or prospectus upon or in which the name of the registered dealer appears as underwriter but where the Commission determines that a registered dealer or a class of registered dealers is subject to conditions of registration or to regulations imposed by a self-regulatory organization that require provision to customers in the same or some other manner of other appropriate information, the Commission may, subject to such terms and conditions as the Commission may impose, exempt the registered dealer or class of registered dealers from the requirements of this section. R.S.O. 1970, c. 426, s. 73, *amended*.

Use of name of another registrant

42. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S.O. 1970, c. 426, s. 74.

Registration not to be advertised

43. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. R.S.O. 1970, c. 426, s. 75.

Holding out by unregistered person

44. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. R.S.O. 1970, c. 426, s. 76.

Advertising approval by Commission

45. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant

or upon the merits of any security or issuer. R.S.O. 1970, c. 426, s. 77.

Margin contracts

46.—(1) Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which,

(*a*) he;

(*b*) his firm or a partner thereof; or

(*c*) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers, any such contract with a customer is, at the option of the customer, voidable and the customer may recover from the dealer all moneys paid with interest thereon or securities deposited in respect thereof.

Exercise of option

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in Ontario. R.S.O. 1970, c. 426, s. 78.

Declaration as to short position

47. Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and who,

(*a*) at the time of placing the order, does not own the security; or

(*b*) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security. R.S.O. 1970, c. 426, s. 79.

Shares in name of registrant not to be voted

48.—(1) Subject to subsection 4, voting securities of an issuer registered in the name of,

(*a*) a registrant or in the name of his nominee; or

(*b*) a custodian or in the name of his nominee, where such issuer is a mutual fund that is a reporting issuer,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

Forwarding of information by registrant

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security so registered at the record date for notice of meeting a copy of any notice, financial statement, information circular or other material but the registrant or custodian is not required to send or deliver such material unless the issuer or the beneficial owner of such securities has agreed to pay the reasonable costs to be incurred by the registrant or custodian in so doing. R.S.O. 1970, c. 426, s. 80 (1), *amended*.

Copies of information

(3) At the request of a registrant or custodian, the person or company sending material referred to in subsection 2 shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

Voting of shares

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection 1 in accordance with any written voting instructions received from the beneficial owner.

Proxies

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection 1. R.S.O. 1970, c. 426, s. 80 (3-5), *amended*.

"custodian" defined

(6) For the purpose of this section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement. *New*.

Submission of advertising

49.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver

to the Commission at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order pursuant to subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made pursuant to subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so. *New.*

PART XIII

PROSPECTING SYNDICATES

Agreements

50.—(1) Upon the filing of a prospecting syndicate agreement and the issuance of a receipt therefor by the Director, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement where,

(*a*) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development, or the acquisition of mining properties, or any combination thereof;

(*b*) the agreement clearly sets out,

(i) the purpose of the syndicate,

(ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,

(iii) the maximum amount, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,

(iv) the maximum number of units in the syndicate, not exceeding 33⅓ per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,

(v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Ontario and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,

(vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,

(vii) that after the sale for cash of any issued units of the syndicate no mining properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate that have been sold for cash,

(viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,

(ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,

(x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash,

(xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units; and

(*c*) the agreement limits the capital of the syndicate to a sum not exceeding $250,000.

Receipt for filed agreement

(2) The Director may in his discretion issue a receipt for a prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses *a*, *b* and *c* of subsection 1.

Application of R.S.O. 1970, c. 340

(3) After a receipt is issued by the Director for a prospecting syndicate agreement, the requirements of *The Partnerships Registration Act* as to filing do not apply to the prospecting syndicate.

Prohibition of trading by dealer

(4) No registered dealer shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal. R.S.O. 1970, c. 426, s. 34, *amended*.

Receipt

(5) The Director shall not refuse to issue a receipt under subsection 1 without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. *New*.

PART XIV

PROSPECTUSES—DISTRIBUTION

"distribution", extended meaning

51. To but not including the day eighteen months after this Act comes into force, for the purposes of sections 53 to 63, "distribution" means only a distribution that is a distribution to the public. *New*.

Prospectus required

52.—(1) No person or company shall trade in a security on his own account or on behalf of any other person or company,

(*a*) before the day eighteen months after this Act comes into force where such trade would be a distribution to the public of such security;

(*b*) on and after the day eighteen months after this Act comes into force, where such trade would be a distribution of such security,

unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director. R.S.O. 1970, c. 426, s. 35 (1); 1971, c. 31, s. 6, *amended*.

Filing without distribution

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated. *New*.

Preliminary prospectus

53.—(1) A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included.

Idem

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S.O. 1970, c. 426, s. 38, *amended*.

Receipt for preliminary prospectus

54. The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S.O. 1970, c. 426, s. 35 (2).

Prospectus

55.—(1) A prospectus shall provide full, true, and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

Supplemental material

(2) The prospectus shall contain or be accompanied by such financial statements, reports, or other documents as are required by this Act or the regulations. R.S.O. 1970, c. 426, s. 41, *amended*.

Amendment to preliminary prospectus on material change

56.—(1) Subject to subsection 2, where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 1 of section 52 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs.

Idem

(2) Where an amendment to a prospectus is filed under subsection 1 for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus such additional distribution shall not be proceeded with for a period of ten days

after the amendment is filed or, in the event the Commission informs the party filing in writing within ten days of the filing that it objects to the further distribution until such time as a receipt for the amended prospectus is obtained from the Director.

Notice of amendment

(3) An amendment to a preliminary prospectus referred to in subsection 1 shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (2, 3), *amended*.

Certificate by issuer

57.—(1) Subject to subsection 3, a prospectus filed under subsection 1 of section 52 or subsection 1 of section 61 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(2) Subject to subsection 3, a prospectus filed under subsection 2 of section 52 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> *The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

Idem

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.

Idem

(4) Where the Director is satisfied upon evidence or submissions made to him that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer.

(5) With the consent of the Director, a promoter need not sign the certificate in a prospectus. Idem

(6) The Director may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection 1 or 2 subject to such conditions as the Director may consider proper. Certificate of promoter

(7) With the consent of the Director, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 52, *amended*. Idem

58.—(1) Where there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus: Certificate of underwriter

> *To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1978 and the regulations thereunder.*

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 53, *amended*. Idem

59. Every prospectus shall contain a statement of the rights given to a purchaser by sections 70 and 126. R.S.O. 1970, c. 426, ss. 64 (9), 65 (8), *amended*. Statement of rights

60.—(1) Subject to subsection 2, the Director shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so. Issuance of receipt

(2) The Director shall not issue a receipt for a prospectus if it appears to him that, Refusal of receipt

(*a*) the prospectus or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) contains a misrepresentation;

(*b*) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(*c*) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(*d*) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(*e*) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(*f*) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into;

(*g*) such agreement as the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(*h*) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(*i*) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

Hearing

(3) The Director shall not refuse to issue a receipt under subsection 1 or 2 without giving the person or company who filed the prospectus an opportunity to be heard. R.S.O. 1970, c. 426, s. 61 (1, 2); 1971, c. 31, s. 16, *amended*.

Referral to Commission

(4) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus, or prospectus raises a material question involving the public interest under subsection 1 or a new or novel question of interpretation under subsection 2 that might result in the Director refusing to issue a receipt under subsection 1 or 2, the Director may refer the question to the Commission for determination.

Form of question

(5) The Director shall state the question in writing setting out the facts upon which the question is based.

Filing of question

(6) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission, and a copy of the question shall forthwith be served by the Secretary upon any interested person or company.

Hearing by Commission

(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration under subsections 1 and 2.

Decision of Commission

(8) Subject to any order of the Supreme Court made under section 9, the decision of the Commission on the question is binding on the Director. *New*.

Refiling of prospectus

61.—(1) No distribution of a security to which subsection 1 of section 52 applies shall continue longer than twelve months from the later of either,

(*a*) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or

(*b*) the date of the last prospectus filed under this section;

as the case may be, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Director. R.S.O. 1970, c. 426, s. 56; 1971, c. 31, s. 11, *amended*.

Idem

(2) A distribution may be continued for a further twelve months if,

(*a*) a *pro forma* prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;

(*b*) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and

(*c*) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.

Idem

(3) The continued distribution of securities after the lapse date does not contravene subsection 1 unless and until any of the conditions of subsection 2 are not complied with.

Failure to refile

(4) Subject to any extension granted under subsection 5, all trades completed in reliance upon subsection 2 after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection 2 are not complied with.

Extension of time

(5) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection 2 where in its opinion it would not be prejudicial to the public interest to do so. *New*.

Notice to Commission of distribution to public

62.—(1) No dealer shall engage in the distribution of a security to which section 52 or 61 is applicable until such dealer has notified the Commission in writing of his intention to engage in such distribution.

Notice of Commission of cessation of distribution to public

(2) Every dealer shall forthwith notify the Commission in writing when he has ceased to engage in the distribution of a security to which section 52 or 61 is applicable. R.S.O. 1970, c. 426, s. 54, *amended*.

Orders to furnish information re distribution to public

63.—(1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations.

Idem

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper. R.S.O. 1970, c. 426, s. 60, *amended*.

PART XV

DISTRIBUTION—GENERALLY

"waiting period" defined

64.—(1) In this section, "waiting period" means the interval, which shall be at least ten days, between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus.

Distribution of material during waiting period

(2) Notwithstanding section 52, but subject to Part XII, it is permissible during the waiting period,

(*a*) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be

permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(*b*) to distribute a preliminary prospectus; and

(*c*) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him. R.S.O. 1970, c. 426, s. 36.

Distribution of preliminary prospectus

65. Any dealer distributing a security to which section 64 applies shall, in addition to the requirements of clause *c* of subsection 2 of section 64, send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S.O. 1970, c. 426, s. 37, *amended*.

Distribution list

66. Any dealer distributing a security to which section 64 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. *New*.

Defective preliminary prospectus

67. Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted by subsection 2 of section 64 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 66. R.S.O. 1970, c. 426, s. 40 (1).

Material given on distribution

68. From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause *a* of subsection 2 of section 64 or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S.O. 1970, c. 426, s. 57; 1971, c. 31, s. 12, *amended*.

Order to cease trading

69.—(1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 2 of section 60 exist, the Commission may order that the distribution of the securities under the prospectus shall cease.

Hearing

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded.

Notice

(3) A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates and upon every dealer who has notified the Commission of his intention to engage in the distribution of the securities, and forthwith upon the receipt of the notice,

(*a*) distribution of the securities under prospectus by the person or company named in the order shall cease; and

(*b*) any receipt issued by the Director for the prospectus is revoked. R.S.O. 1970, c. 426, s. 62; 1971, c. 31, s. 17, *amended*.

Obligation to deliver prospectus

70.—(1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 1 of section 52 or section 61 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after entering into such agreement.

Withdrawal from purchase

(2) An agreement of purchase and sale referred to in subsection 1 is not binding upon the purchaser, if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after receipt by the

purchaser of the latest prospectus and any amendment to the prospectus.

Application of subs. 2

(3) Subsection 2 does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection 2, otherwise than to secure indebtedness, before the expiration of the time referred to in subsection 2.

Time of receipt

(4) For the purpose of this section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Receipt of prospectus by agent

(5) The receipt of the latest prospectus or any amendment to the prospectus by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection 1 shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus and any amendment to the prospectus.

Receipt of notice by agent

(6) The receipt of the notice referred to in subsection 2 by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection 1 shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice.

Dealer as agent

(7) For the purpose of this section, a dealer shall not be considered to be acting as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

Onus of proof

(8) The onus of proving that the time for giving notice under subsection 2 has expired is upon the dealer from whom the purchaser has agreed to purchase the security. R.S.O. 1970, c. 426, s. 64; 1971, c. 31, s. 19, *amended*.

PART XVI

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

Prospectus not required

71.—(1) Subject to the regulations, sections 52 and 61 do not apply to a distribution where,

(*a*) the purchaser is,

(i) a bank to which the *Bank Act* (Canada) applies or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)

(ii) a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970, c. 254

(iii) an insurance company licensed under *The Insurance Act*, R.S.O. 1970, c. 224

(iv) Her Majesty in right of Canada or any province or territory of Canada, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(*b*) the trade is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account, where such trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;

(*c*) the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;

(*d*) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than $97,000;

(*e*) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 11 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt;

(*f*) the trade is made by an issuer,

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer;

(*g*) the trade is made by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie;

(*h*) the trade is made by an issuer,

(i) in a right, transferable or otherwise granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and either,

(iii) the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or

(iv) the issuer has delivered to the Commission information relating to the securities that is

satisfactory to and accepted by the Commission;

(*i*) the trade is made in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of that other company in connection with,

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;

(*j*) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part XIX;

(*k*) the trade is made in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 88 or by the Commission under section 99;

(*l*) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than $100,000;

(*m*) the trade is made by an issuer in a security of its own issue in consideration of mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary;

(*n*) the trade is made by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(*o*) the trade is made by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, in which

case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers;

(*p*) the trade is made by an issuer with a view to the sale of securities of its own issue if solicitations are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers and,

(i) each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

a. an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered dealer, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer, or

b. a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

(iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause within the previous twelve months,

but an issuer which has relied upon this exemption may not again thereafter rely upon this exemption;

(*q*) the trade is made from one registered dealer to another registered dealer where the registered dealer making the purchase is acting as principal;

(*r*) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters; or

(*s*) the trade is in a commodity futures option or commodity futures contract where such trade is that of a hedger through a dealer, within the meaning of *The Commodity Futures Act, 1978*. 1978, c. ...

Trust companies deemed principals R.S.O. 1970, c. 254

(2) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

Report

(3) Subject to the regulations, where a trade has been made under clause *a*, *b*, *c*, *d*, *l*, *p* or *q* of subsection 1, the vendor shall within ten days file a report prepared and executed in accordance with the regulations, but no report is required where, by a trade under clause *a* of subsection 1, a bank to which the *Bank Act* (Canada) applies or a loan corporation or trust company registered under *The Loan and Trust Corporations Act* acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness. R.S.C. 1970, c. B-1

First trades deemed distribution

(4) The first trade in securities previously acquired pursuant to an exemption contained in clause *a*, *b*, *c*, *d*, *l*, *m*, *p* or *q* of subsection 1, other than a further trade exempted by subsection 1, is a distribution, unless,

(*a*) the issuer of the security is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(*b*) (i) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission and comply with the requirements of either clause *m* or *n* of subsection 1 of section 383 of *The Insurance Act*, and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or R.S.O. 1970, c. 224

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer or are preferred shares of an issuer and comply with the requirements of clause *k* or *m*, as the case may be, of subsection 1 of section 383 of *The Insurance Act* and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or

R.S.O. 1970, c. 224

(iii) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed, and have been held at least one year from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later; and

(*c*) the vendor files a report within ten days prepared and executed in accordance with the regulations,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

Idem

(5) The first trade in securities previously acquired under an exemption contained in clause *f*, *i*, *j*, *k* or *n* of subsection 1 and the first trade in previously issued securities of a company that has ceased to be a private company, other than a further trade exempted by subsection 1, is a distribution except that where,

(*a*) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months or, in the case of securities acquired under clause *i* of subsection 1, one of the amalgamating or merged corporations or one of the continuing corporations has been a reporting issuer for twelve months and the issuer is not in default of any requirement of this Act or the regulations;

(*b*) disclosure to the Commission has been made of its exempt trade or in the case of a company that has ceased to be a private company the issuer has filed with the Commission such report with respect to its outstanding securities as may be required by the regulations; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the trade,

then such first trade is a distribution only if it is a distribution as defined in subparagraph iii of paragraph 11 of subsection 1 of section 1.

Idem

(6) The first trade in securities previously purchased under an exemption contained in clause *o* or *r* of subsection 1, other than a further trade exempted by subsection 1, is a distribution.

Prospectus not required

(7) Sections 52 and 61 do not apply to a distribution within the meaning of subparagraph iii of paragraph 11 of subsection 1 of section 1 or by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt in accordance with clause *e* of subsection 1, if,

(*a*) the distribution is exempted by subsection 1; or

(*b*) the issuer of the security is a reporting issuer and has been a reporting issuer for at least eighteen months and is not in default of any requirement of this Act or the regulations and the seller, unless exempted by the regulations,

(i) files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than fourteen days prior to the proposed trade,

a. a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and

b. a declaration signed by each seller as at a date not more than twenty-four

hours prior to its filing and prepared and executed in accordance with the regulations and certified as follows:

"The seller for whose account the securities to which this certificate relates are to be sold hereby represents that he has no knowledge of any material change which has occurred in the affairs of the issuer of the securities which has not been generally disclosed and reported to the Commission, nor has he any knowledge of any other material adverse information in regard to the current and prospective operations of the issuer which have not been generally disclosed",

and,

(ii) files within three days after the completion of any trade a report of the trade in the form prescribed under Part XX,

provided that the notice required to be filed under sub-subclause a of subclause i and the declaration required to be filed under sub-subclause b of subclause i shall be renewed and filed at the end of sixty days after the original date of filing and thereafter at the end of each twenty-eight day period so long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and

(*c*) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of such trade. *New*.

Certificate re reporting issuer

(8) Subject to subsection 10, for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to apply to the Commission for a certificate issued for this purpose in accordance with section 136 and is entitled to rely on the certificate.

List re defaulting reporting issuers

(9) Subject to subsection 10, for the purpose of determining whether a reporting issuer is not in default of any requirement

of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers which shall be maintained by the Commission for public inspection in its offices during its normal business hours.

Exception

(10) No person or company who knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate or on the list.

Reporting issuers

(11) For the purposes of this section, an issuer shall be deemed to have been a reporting issuer from the date that it met the condition of the appropriate subclause of paragraph 38 of subsection 1 of section 1 provided that in each case it is currently in compliance with the requirements of this Act and in the case of qualification under subclause iii of paragraph 38 of subsection 1 of section 1 it is also currently listed and posted for trading on any stock exchange in Ontario recognized by the Commission. *New.*

Prospectus not required

72.—(1) Sections 52 and 61 do not apply to a distribution of securities,

(*a*) referred to in subsection 2 of section 34 excepting paragraphs 14 and 15 thereof;

(*b*) that are listed and posted for trading on any stock exchange recognized for the purpose of this section by the Commission where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange and the Commission;

(*c*) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided,

(i) the option has been written by a member of an exchange recognized by the Commission for this purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for this purpose,

(ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for this purpose, and

(iii) the option is in the form from time to time prescribed by the regulations; or

(*d*) that are exempted by the regulations.

Application of ss. 70 and 126

(2) Sections 70 and 126 apply *mutatis mutandis* to a distribution under clause *b* of subsection 1 as if sections 52 and 61 were applicable thereto, and the statement of material facts referred to in clause *b* of subsection 1 shall be deemed conclusively to be a prospectus for the purposes of sections 70 and 126. *New.*

Order exempting from registration a prospectus

73.—(1) The Commission may, upon the application of an interested person or company, rule that an intended trade is not subject to section 24 or 52 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary. 1971, c. 31, s. 14, *part, amended.*

Determination of whether distribution has ceased

(2) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly.

Ruling final

(3) A decision of the Commission under this section is final and there is no appeal therefrom. 1971, c. 31, s. 14, *part.*

PART XVII

CONTINUOUS DISCLOSURE

Publication of material change

74.—(1) Subject to subsection 3, where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a press release authorized by a senior officer disclosing the nature and substance of the change.

Report of material change

(2) Subject to subsection 3, the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

Idem

(3) Where,

(*a*) in the opinion of the reporting issuer, the disclosure required by subsections 1 and 2 would be

unduly detrimental to the interests of the reporting issuer; or

(*b*) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that persons with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, in lieu of compliance with subsection 1, forthwith file with the Commission the report required under subsection 2 marked "confidential" together with written reasons for non-disclosure.

Idem

(4) Where a report has been filed with the Commission under subsection 3, the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the intitial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection 1 or, if the material change consists of a decision of the type referred to in clause *b* of subsection 3, until that decision has been rejected by the board of directors of the issuer. *New*.

Trading where undisclosed change

75.—(1) No person or company in a special relationship with a reporting issuer shall,

(*a*) purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change in the affairs of the reporting issuer that he or it knew or ought reasonably to have known had not been generally disclosed; or

(*b*) inform, other than in the necessary course of business, another person or company about a fact or change which he knows is a material fact or material change before the material fact or material change has been generally disclosed.

Exception

(2) No purchaser or vendor shall be found to have contravened clause *a* of subsection 1 if such purchaser or vendor proves that he did not make use of knowledge of the material fact or material change in purchasing or selling the securities.

Interpretation

(3) For the purposes of this section, a person or company is in a special relationship with a reporting issuer where,

(*a*) the person or company is an insider or an affiliate of the reporting issuer;

(*b*) the person is a director, officer or employee of the reporting issuer or of a company that is an insider or an affiliate of the reporting issuer;

(*c*) the person or company has engaged, is engaging in or proposes to engage in any business or professional activities with or on behalf of the reporting issuer and thereby has acquired knowledge of the material fact or material change; or

(*d*) the person or company is an associate of the reporting issuer or of any person or company referred to in clause *a*, *b* or c. *New*.

Interim financial statement

76.—(1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the three-month period that commenced on the date of incorporation or organization and for each of the two subsequent three-month periods during its first financial year, if the reporting issuer has not completed a financial year; or

(*b*) for the three-month period of the current financial year that commenced immediately following the last financial year and for each of the two subsequent three-month periods during the current financial year, including a comparative statement for the corresponding three-month period in the last financial year, if the reporting issuer has completed a financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 130 (1), *amended*.

Idem

(2) Every mutual fund in Ontario shall file within sixty days of the date to which it is made up an interim financial statement,

(*a*) for the six-month period that commenced on the date of incorporation or organization if the reporting issuer has not completed a financial year; or

(*b*) for the six-month period that commenced immediately after the last financial year, if the reporting issuer has completed a financial year,

made up and certified by the regulations and in accordance with generally accepted accounting principles. *New*.

Comparative financial statements

77.—(1) Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to,

(*a*) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer or mutual fund has completed a financial year, the last financial year, as the case may be; and

(*b*) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1970, c. 426, s. 120 (1), *amended*.

Auditor's report

(2) Every financial statement referred to in subsection 1 shall be accompanied by a report of the auditor of the reporting issuer or mutual fund prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 119 (2), *amended*.

Auditor's examination

(3) The auditor of a reporting issuer or mutual fund shall make such examinations as will enable him to make the report required by subsection 2. R.S.O. 1970, c. 426, s. 119 (1), *amended*.

"auditor" defined

(4) For the purposes of this Part, "auditor", where used in relation to the reporting issuer or mutual fund, includes the auditor of the reporting issuer or mutual fund and any other independent public accountant. *New*.

Delivery of financial statements to security holders

78. Every financial statement required to be filed pursuant to section 76 or section 77 shall be concurrently sent by the reporting issuer or the mutual fund in Ontario, as the case may be, to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer is in Ontario, but where the reporting issuer is subject to a corresponding requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued then compliance with such corresponding requirement shall be deemed to be compliance with this section. *New*.

Relief against certain requirement

79. Upon the application of a reporting issuer or upon the motion of the Commission, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose,

(*a*) permitting the omission from the financial statements required to be filed under this Part of,

(i) comparative financial statements for particular periods of time,

(ii) sales or gross operating revenue where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the reporting issuer, or

(iii) basic earnings per share or fully diluted earnings per share; or

(*b*) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Part or the regulations relating to a requirement of this Part,

(i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,

(ii) if the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its, or their, securities in a form, or at times, different from those required by this Part, or

(iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S.O. 1970, c. 426, s. 132 (1), *amended*.

Filing of information circular

80.—(1) Where the management of a reporting issuer is required to send an information circular under clause *a* of subsection 1 of section 85, the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations.

Idem

(2) In any case where subsection 1 is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations. *New*.

Filing of documents filed in another jurisdiction

81. Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued

require the reporting issuer to file substantially the same information in that jurisdiction as is required by this Part, the reporting issuer may comply with the filing requirements of this Part by filing copies of the press release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. *New.*

Order relieving small reporting issuer

82. Upon the application of a reporting issuer that has fewer than fifteen security holders whose latest address as shown on the books of the reporting issuer is in Ontario, the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer shall be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. *New.*

PART XVIII

PROXIES AND PROXY SOLICITATION

Interpretation

83. In this Part,

(*a*) "information circular" means an information circular prepared in accordance with the regulations;

(*b*) "solicit" and "solicitation" include,

(i) any request for a proxy whether or not accompanied by or included in a form of proxy,

(ii) any request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,

(iv) the sending or delivery of a form of proxy to a security holder under section 84,

but do not include,

(v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or

(vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy. R.S.O. 1970, c. 426, s. 101 (*b*, *c*), *amended*.

Mandatory solicitation of proxies

84. Subject to section 87, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send by prepaid mail to each such security holder who is entitled to notice of meeting, at his latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S.O. 1970, c. 426, s. 102 (1), *amended*.

Information circular

85.—(1) Subject to subsection 2 and section 87, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless,

(*a*) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such security holder of the reporting issuer whose proxy is solicited at his latest address as shown on the books of the reporting issuer; or

(*b*) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited.

Application of subs. 1

(2) Subsection 1 does not apply to,

(*a*) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;

(*b*) any solicitation by a person or company made under section 48; or

(*c*) any solicitation by a person or company in respect of securities of which he is the beneficial owner. R.S.O. 1970, c. 426, s. 103 (1, 2), *amended*.

Voting where proxies

86. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his name to be voted unless,

(*a*) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or

(*b*) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S.O. 1970, c. 426, s. 106, *amended*.

Compliance with laws of other jurisdiction

87.—(1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this Part, the requirements of this Part do not apply.

Exemption by order

(2) Subject to subsection 1, upon the application of any interested person or company, the Commission may,

(*a*) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or

(*b*) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as the Commission may impose; exempting, in whole or in part, a person or company from the requirements of this Part and of section 80. *New*.

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

Interpretation

88.—(1) In this Part,

(*a*) "class of securities" means the particular class or series of securities for which a take-over bid or an issuer bid is made;

(*b*) "day" means a clear day and a period of days shall be deemed to commence the day following the event which began the period and shall be deemed to terminate on midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate on midnight of the day next following that is not a Sunday or holiday;

(*c*) "directors' circular" means a directors' circular prepared in accordance with the regulations;

(*d*) "issuer bid" means,

(i) an offer made by an issuer to security holders the last address of any of whom as shown on the books of the issuer is in Ontario to purchase, redeem or otherwise acquire any or all of a class of the securities of the issuer, other than debt securities that are not convertible into equity securities,

(ii) the acceptance by an issuer of an offer to sell securities of the issuer, other than debt securities that are not convertible into equity securities, and the issuer accepting the offer to sell shall be deemed to be an offeror;

(*e*) "market price", as to securities in which there is a published market, at any date, means,

(i) except where a determination has been made by the Commission under clause *b* of section 99, the price determined in accordance with the regulations, by reference to the price of such securities as established by trades on the published market, or

(ii) where the Commission has made a determination of market price under clause *b* of section 99, the price so determined;

(*f*) "offeree" means a person or company to whom a take-over bid or an issuer bid is made and whose

latest address as shown on the books of the offeree company is in Ontario;

(*g*) "offeree company" means a company or other issuer whose securities are the subject of a take-over bid;

(*h*) "offeror" means a person or company other than an agent, who makes a take-over bid or an issuer bid and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

then each of them shall be deemed to be an offeror if the offer made by any of them is a take-over bid;

(*i*) "offeror's presently-owned securities" means voting securities of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or associates of the offeror and where two or more persons or companies make offers,

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

includes the voting securities owned by all of such persons or companies and their associates;

(*j*) "published market", as to any class of securities, means a stock exchange recognized by the Commission for purposes of this Part on which such securities are listed, or any other market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation; and

(*k*) "take-over bid" means,

(i) an offer made to security holders, the last address of any of whom as shown on the books of the offeree company or other issuer is in Ontario, to purchase directly or indirectly voting securities of the company or other issuer,

(ii) the acceptance by a person or company of an offer to sell voting securities of a company or other issuer and such acceptance shall be deemed to constitute an offer to purchase and the person or company accepting the offer shall be deemed to be an offeror, or

(iii) a combination of an offer to purchase referred to in subclause i and an acceptance of an offer to sell referred to in subclause ii,

where the voting securities which are the subject of the offer to purchase, the acceptance of the offer to sell or the combination thereof, as the case may be, together with the offeror's presently owned securities will in the aggregate exceed 20 per cent of the outstanding voting securities of the company or other issuer and where two or more persons or companies make or accept offers jointly or in concert or intending to exercise jointly or in concert any voting rights attaching to the securities to be acquired, then the securities owned by each of them shall be included in the calculation of the percentage of the outstanding voting securities of the company or other issuer owned by each of them;

(*l*) "uniform act province" means a province or territory of Canada designated in the regulations as a province or territory which has legislation in effect containing provisions substantially the same as this Part and section 129. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted take-over bids

(2) Subject to section 91, a take-over bid is exempted from the requirements of this Part where,

(*a*) it is made through the facilities of a stock exchange recognized by the Commission for the purpose of this section according to the by-laws, regulations or policies of the stock exchange;

(*b*) it is an offer to purchase securities in a private company;

(*c*) it is an offer to purchase securities by way of agreements with fewer than fifteen security holders and not made pursuant to an offer to security holders generally, but where an offeror enters into an agreement to purchase securities from a person or company and the offeror knows or ought to know after reasonable inquiry that,

(i) one or more other persons or companies on whose behalf that person or company is acting as trustee, executor, administrator or other legal representatives, have a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of security holders with whom there have been agreements, but where an *inter vivos* trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered to be a single security holder in such determination, or

(ii) the person or company acquired the securities during the two years preceding the date of the agreement with the intent that they should be sold under such agreement, then each person or company from whom those securities were acquired shall be included in the determination of the number of security holders with whom there have been agreements;

(*d*) it involves the acquisition of not more than 5 per cent of the voting securities of the offeree company but the aggregate number of voting securities acquired by the offeror, his associates or affiliates, within any period of twelve consecutive months in reliance on the exemptions provided by this subsection, shall not exceed 5 per cent of the outstanding voting securities of the offeree company at the beginning of the period, and this clause does not apply to any purchase of voting securities in which there is a published market if that purchase is effected above the market price at the date of purchase plus reasonable brokerage fees or other commission; or

(*e*) it is an offer to acquire voting securities of an issuer made by and accepted by a person or company each of whom is, as regards such issuer, a person or company referred to in subparagraph iii of paragraph 11 of subsection 1 of section 1. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted issuer bid

(3) An issuer bid is exempted from the requirements of this Part where,

(*a*) the securities are purchased, redeemed or otherwise acquired in accordance with the terms and con-

ditions agreed to at the time they were issued or subsequently varied by amendment of the documents setting out those terms and conditions, or are acquired to meet sinking fund requirements or from an employee of the issuer or an employee of an affiliate;

(*b*) the purchases, redemptions or other acquisitions are required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated or organized;

(*c*) the issuer bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this Part according to the by-laws, regulations or policies of the stock exchange;

(*d*) following the publication of a notice of intention in the form and in the manner prescribed by the regulations, the issuer purchases securities of the issuer, but the aggregate number, or in the case of convertible debt securities, the aggregate principal amount, of securities purchased by the issuer in reliance on the exemption provided by this clause during any period of twelve consecutive months shall not exceed 5 per cent of the securities of the class sought outstanding at the commencement of the period; or

(*e*) the issuer bid is made by a private company. *New.*

Requirements for take-over and issuer bids

89.—(1) The following provisions apply to every take-over bid and issuer bid:

1. The take-over bid or issuer bid shall be sent to all holders of the class of securities sought, and of securities convertible into, or carrying the right to purchase, securities of that class, whose last address on the records of the offeree company or issuer is in Ontario.

2. The period of time in which securities may be deposited pursuant to a take-over bid or an issuer bid shall not be less than twenty-one days from the date thereof.

3. Any securities deposited pursuant to a take-over bid or an issuer bid shall not be taken up and paid for by the offeror until the expiration of ten days from its date.

4. Any securities deposited pursuant to a take-over bid or an issuer bid may be withdrawn by an offeree

at any time until the expiration of ten days from its date.

5. Notice of withdrawal of any securities pursuant to paragraph 4 shall be made in writing, including telegraphic communication, by the offeree or his agent and must be actually received by the depositary.

6. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, securities deposited pursuant thereto shall not be taken up and paid for by an offeror until the expiration of twenty-one days from its date.

7. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, the period of time within which securities may be deposited pursuant to the take-over bid or an issuer bid, or any extension thereof, shall not exceed thirty-five days from the date of the take-over bid or an issuer bid.

8. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees, securities deposited pursuant to the take-over bid or an issuer bid shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day within which securities may be deposited thereto.

9. Where a take-over bid or an issuer bid is made for less than all of the class of securities sought that are owned by offerees and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken up by the offeror shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each offeree.

10. Where the offeror making a take-over bid intends to purchase securities in the market his intention shall be set out in the take-over bid circular and, where the take-over bid is made for less than all of the class of securities sought that are owned by offerees, the offeror shall not reduce the number of securities he is bound or willing to take up under paragraphs 8 and 9 by the number of securities purchased in the market.

11. In the case of a take-over bid, where the laws applicable to the company provide for a right of appraisal or acquisition, the offeror shall advise the offeree of his rights of appraisal and whether the offeror intends exercising any right of acquisition he may have.

12. The offeror shall not attach any conditions to the offer except the right to withdraw the offer if,

(*a*) the offerees fail to tender the minimum number of securities the offeror is bound and willing to take up;

(*b*) any undisclosed action prior to the date of the offer or any action subsequent to such date, by a person or company other than the offeror, including a governmental or regulatory authority, or, in the case of a take-over bid, by the offeree company or its directors or senior officers, that results in a material change in the affairs of the company; or

(*c*) the required approval of a governmental or regulatory authority is not obtained prior to the expiration of the offer.

13. Where the take-over bid or issuer bid is made for all of the class of securities sought that are owned by offerees, the offeror shall, at the expiration of thirty-five days from the making of the offer, take up and pay for the securities tendered at that time or abandon his offer.

14. Where the take-over bid is subject to the approval of a governmental or regulatory authority, the time within which the offeror is bound to take up and make payment for the securities under paragraphs 8 and 13 may be extended for a period not exceeding an additional ninety days. R.S.O. 1970, c. 426, s. 82; 1971, c. 31, s. 23, *amended*.

Sale by offeror prohibited

(2) The offeror shall not sell any of the class of the securities that are the subject of the take-over bid during the period of the take-over bid.

Offer increasing take-over bid or issuer bid

(3) Where, during the course of a take-over bid or an issuer bid, the offeror pays or agrees to pay a price for securities higher than the consideration offered through the take-over

bid or issuer bid, the take-over bid or issuer bid shall be deemed to be varied by increasing the consideration to the higher price. *New.*

Notice of variation in take-over bid or issuer bid

90.—(1) Where a significant change has occurred in the information contained in a take-over bid circular or issuer bid circular while the offer is still outstanding or where a take-over bid or an issuer bid has been varied by changing any of its terms, every person or company whose shares have not been taken up and paid for and who has been sent the take-over bid circular or issuer bid circular shall be sent notice of such change or variation and, except where a variation is solely an increase in price, the date of the take-over bid or issuer bid shall, for the purposes of section 89, be deemed to be the date of the sending of the notice of such change or variation.

Idem

(2) A notice of variation shall advise the offeree of his rights under paragraph 4 of subsection 1 of section 89. *New.*

Variation of terms of take-over bid or issuer bid

(3) Where the terms of a take-over bid or an issuer bid are varied before the expiration thereof by increasing the consideration offered for the securities, the offeror shall pay such increased consideration to each offeree whose securities are taken up and paid for pursuant to the take-over bid or issuer bid, whether or not such securities have been taken up by the offeror before the variation of the take-over bid or issuer bid. R.S.O. 1970, c. 426, s. 84, *amended*.

Follow-up offers

91.—(1) Where a take-over bid is effected without compliance with section 89 in reliance on the exemption in clause *c* of subsection 2 of section 88, if there is a published market in the class of securities acquired and the value of the consideration paid for any of the securities acquired exceeds the market price at the date of the relevant agreement plus reasonable brokerage fees or other commissions, the offeror shall within 180 days after the date of the first of the agreements comprising the take-over bid, offer to purchase all of the additional securities of the same class owned by security holders, the last registered address of whom is in Ontario or in a uniform act province, at and for a consideration per security at least equal in value to the greatest consideration paid under any such agreements, and that offer shall be a take-over bid for purposes of this Part.

True target companies

(2) Where a take-over bid, including a take-over bid exempted from the requirements of this Part under subsection 2 of section 88,

(*a*) results in the acquisition by the offeror of the power or authority to control the business or affairs of the offeree company and, in consequence thereof, the offeror acquires the indirect power or authority to control the business or affairs of another company that is not a private company, herein called the "true target company"; and

(*b*) forms, to the knowledge of the offeror, part of a series of transactions initiated by a present or former holder of securities of the true target company who formerly had the power or authority to control the business or affairs of the true target company, the principal purpose of which was to permit the indirect sale of some or all of his securities of the true target company in a manner that would avoid the application of subsection 1,

the take-over bid shall, for the purposes of subsection 1, be deemed to constitute a take-over bid for securities of the true target company effected without compliance with section 89 in reliance on the exemption in clause *c* of subsection 2 of section 88, at a consideration per security equal to the value per security of the true target company received directly or indirectly by the security holder as a consequence of the series of transactions initiated by him.

Premium prohibited

(3) Subject to any decision of the Commission under section 99, where a take-over bid or an issuer bid is made, all holders of the same class of securities shall be offered the same consideration and no collateral agreement with any such holders shall have the effect, directly or indirectly, of offering such holders a consideration of greater value for their securities than that offered to the other holders of the same class of securities. *New*.

Sending by mail

92. A take-over bid, a varied take-over bid, an issuer bid or a varied issuer bid shall be communicated to each offeree by prepaid mail, by personal delivery or in such other manner as the Director may approve and shall be deemed conclusively to have been dated as of the date on which it was mailed, delivered or otherwise communicated. R.S.O. 1970, c. 426, s. 83, *amended*.

Consideration in cash

93. Where a take-over bid or an issuer bid provides that the consideration for the securities deposited pursuant thereto is to be paid in cash or partly in cash, the offeror shall make adequate arrangements to ensure that the required funds are available to effect payment in full for all securities owned by offerees that the offeror has offered to purchase pursuant to the take-over bid. R.S.O. 1970, c. 426, s. 85.

94.—(1) A take-over bid circular shall form part of or accompany a take-over bid. Take-over bid circular

(2) Every take-over bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations. Content

(3) Where a take-over bid provides that the consideration for the securities of the offeree company is to be, in whole or in part, securities of an issuer, the take-over bid circular shall contain the additional information prescribed by the regulations. R.S.O. 1970, c. 426, s. 86, *amended*. Consideration in securities

95.—(1) An issuer bid circular shall form part of or accompany an issuer bid. Issuer bid circular

(2) Every issuer bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations. Contents

(3) Where an issuer bid provides that the consideration for the securities is to be, in whole or in part, other securities of the issuer the issuer bid circular shall contain the additional information prescribed by the regulations. *New*. Consideration in securities

96.—(1) The board of directors of an offeree company shall send a directors' circular to each offeree not later than ten days from the date of the take-over bid prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (1), *amended*. Directors' circular

(2) The board of directors may include in a directors' circular a recommendation to accept or to reject a take-over bid if it sees fit to do so. *New*. Recommendation by board

(3) An individual director or officer may recommend to the offerees acceptance or rejection of the take-over bid made to such offerees if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (4), *amended*. Recommendation by individual director

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending a director's circular, advise the offerees of this fact and may advise them not to tender their securities until further communication is received from the directors. R.S.O. 1970, c. 426, s. 87 (2), *amended*. Advising of consideration

(5) Where the board of directors sends a communication under subsection 4, it shall communicate the recommendation Advising of decision of directors

or the decision not to make a recommendation to the offerees at least seven days prior to the expiry of the offer. R.S.O. 1970, c. 426, s. 87 (3), *amended*.

Service

(6) All communications required or permitted by this section shall be sent to each offeree by prepaid mail to his latest address as shown on the books of the offeree company. R.S.O. 1970, c. 426, s. 87 (5).

Circulation of recommendation of individual director

(7) Where an individual director or officer submits a recommendation prepared in accordance with subsection 3 to the board of directors prior to the board of directors sending the directors' circular required by subsection 1, or the further communication permitted by subsection 5, the board of directors shall send a copy of the recommendation of the individual director or officer to the offerees together with the circular or further communication. *New*.

Approval of circulars

97.—(1) Where a take-over bid is made by or on behalf of an issuer, the contents of the take-over bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 89 (1), *amended*.

Idem

(2) Where a take-over bid is made by or on behalf of an issuer, the take-over bid circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 93.

Idem

(3) The contents of a directors' circular shall be approved and the delivery thereof authorized by the directors of the offeree company. R.S.O. 1970, c. 426, s. 89 (2), *amended*.

Idem

98. The issuer bid circular shall be approved and the delivery thereof authorized by the directors of the issuer. *New*.

Applications to the Commission

99. Upon an application by an interested person or company, the Commission may, subject to such terms and conditions as it may impose,

(*a*) decide that an offeror shall not be obligated to comply with subsection 1 of section 91 where the Commission finds that the offeror will not or did not acquire through the offer the power or authority to control the business or affairs of the offeree company;

(*b*) where the Commission is satisfied that the market price of securities of any class determined in accordance with the regulations, by reference to the price of such securities as established by trades on a published market was affected by an anticipated take-over bid or by improper manipulation, determine the market price of such securities at any date, such determination to be based on a finding by the Commission as to the price at which a holder of securities of that class could reasonably have expected to dispose of his securities immediately prior to the relevant date excluding any change in price reasonably attributable to the anticipated take-over bid or to the improper manipulation;

(*c*) decide for purposes of section 91 that a consideration proposed to be offered by an offeror is, or is not, at least equal in value to the greatest consideration paid under the relevant agreements;

(*d*) decide for the purposes of section 91 that a collateral agreement or arrangement with a selling security holder is made for reasons other than to increase the value of the consideration paid to him for his securities and may be entered into notwithstanding that section; and

(*e*) exempt any person or company from any requirements of this Part where in its opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 90, *amended*.

Naming of offeror

100. The identity of the offeror shall be disclosed in a take-over bid circular. 1971, c. 31, s. 27, *amended*.

PART XX

INSIDER TRADING AND SELF-DEALING

Interpretation

101.—(1) In this Part,

(*a*) "mutual fund" means, except in section 107, a mutual fund that is a reporting issuer;

(*b*) "related mutual funds" includes more than one mutual fund under common management;

(*c*) "related person or company" in relation to a mutual fund means a person in whom, or a company

in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of this Part from making any investment.

Idem

(2) For the purpose of this Part,

(*a*) any issuer in which a mutual fund holds in excess of 10 per cent of the voting securities or in which the mutual fund and related mutual funds hold in excess of 20 per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds;

(*b*) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other transferable option relates; and

(*c*) for the purpose of reporting under section 102 or 103, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent. R.S.O. 1970, c. 426, s. 109, *amended*.

Report

102.—(1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

Idem

(2) A person or company who has filed or is required to file a report under this section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, if he was an insider of the reporting issuer at any time during such month, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during said month giving such details of each transaction as may be required by the regulations. R.S.O. 1970, c. 426, s. 110 (1, 2), *amended*.

(3) A person or company who becomes an insider of a reporting issuer by reason of subsection 8 or 9 of section 1 shall file the reports required by subsections 1 and 2 of this section for the previous six months or such shorter period that he was a director or officer of the reporting issuer within ten days after the end of the month that the issuer became an insider of a reporting issuer or the reporting issuer became an insider of another reporting issuer as the case may be. *New.* Idem.

103.—(1) Where a person or company becomes the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding, through purchases effected through a take-over bid or issuer bid exempted from the requirements of Part XIX by subsection 2 or subsection 3 of section 88, such person or company shall file a report as of the day on which he acquired the ownership within three days of acquiring such 20 per cent ownership. Report of offeror

(2) A person or company who is the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding shall, within three days of purchasing further voting securities carrying an additional 5 per cent of the voting rights, file a report as of the day on which he acquired an additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent. Idem

(3) Where the facts required to be reported by this section are identical to those required under section 102, a separate report under section 102 is not required. 1971, c. 31, s. 33, *amended.* Idem

104. No insider of a reporting issuer shall transfer or cause to be transferred any securities of the reporting issuer into the name of an agent, nominee or custodian without delivering to the Commission a report of such transfer in accordance with the regulations except for a transfer for the purpose of giving collateral for a *bona fide* debt. *New.* Report of transfer by insider

105. Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that they are beneficially owned by an insider and that the insider has failed to file a report of such ownership with the Commission as required by this Part, the person or company shall file a report in Report of transfer by insider

accordance with the regulations except where the transfer was for the purpose of giving collateral for a *bona fide* debt. *New.*

Interpretation

106. For the purposes of sections 107, 108, 109, 110 and 111,

(*a*) "investment" means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company;

(*b*) a person or company or a group of persons or companies has a significant interest in an issuer, if,

(i) in the case of a person or company, he or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or

(ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the outstanding shares or units of the issuer;

(*c*) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than 20 per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by him as underwriter in a distribution of such securities but such exclusion ceases to have effect on completion or cessation of the distribution by him;

(*d*) where a person or company or group of persons or companies owns beneficially, directly or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. *New.*

Loans of mutual funds in Ontario

107.—(1) No mutual fund in Ontario shall knowingly make an investment by way of loan to,

(*a*) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;

(*b*) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.

Investments of mutual funds, etc.

(2) No mutual fund in Ontario shall knowingly make an investment,

(*a*) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

(*b*) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or

(*c*) in an issuer in which,

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

Divesting of prohibited loans and investments

(3) No mutual fund in Ontario or its management company or its distribution company shall knowingly hold an investment made after the coming into force of this Act that is an investment described in this section. *New.*

Indirect investment

108. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 107 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 107 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. *New.*

Relieving orders

109. Upon an application of an interested person or company, the Commission may, where it is satisfied,

(*a*) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or

(*b*) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that section 107 or 108 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. *New.*

Exception to s. 106 (*d*)

110. Notwithstanding clause *d* of section 106, a mutual fund is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. *New.*

Fees on investment

111.—(1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director.

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to the mutual fund. *New.* Relieving orders

112.—(1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Standard of care for management of mutual fund

(2) For the purposes of subsection 1, a person or company is responsible for the management of a mutual fund if he has legal power or right to control the mutual fund or if in fact he is able to do so. *New.* Idem

113.—(1) Every management company shall file a report prepared in accordance with the regulations of, Filing by management companies

(*a*) every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(*b*) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;

(*c*) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and

(*d*) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs.

(2) The Commission may, upon the application of the management company of a mutual fund and where it is Relieving orders

of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to any transaction or class of transactions. *New.*

"responsible person" defined

114.—(1) In this section, "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

Interest of manager in investment portfolio

(2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to,

(*a*) invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase;

(*b*) purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager; or

(*c*) make a loan to a responsible person or an associate of a responsible person or the portfolio manager.

Exemption of portfolio managers on terms and conditions

(3) Where the Commission determines that a portfolio manager or a class of portfolio managers is subject to regulations, imposed by a self-regulatory organization, to substantially the same effect as the requirements set out in subsection 2, the Commission may, subject to such terms and conditions as the Commission may impose, exempt the portfolio manager or class of portfolio managers from the requirements of subsection 2. *New.*

Trades by mutual fund insiders

115. No person or company who has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by a portfolio manager shall purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for a client by a portfolio manager include securities of that issuer and where the information is used by the person or company for his or its direct benefit or advantage. *New.*

Publication of summaries of reports

116. The Commission shall summarize in or as a part of a monthly periodical available to the public on payment of a reasonable fee the information contained in every report filed in compliance with this Part. R.S.O. 1970, c. 426, s. 111 (2).

Filing in other jurisdiction

117.—(1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Part, the filing requirements of this Part may be complied with by filing the reports required by the laws of such jurisdiction manually signed or certified in accordance with the regulations. *New.*

Exemptions by order of Commission

(2) Subject to subsection 1, the Commission may,

(*a*) upon the application of an interested person or company,

(i) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or

(ii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing; or

(*b*) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company, class of persons or companies or class of transactions from the requirements of this Part. R.S.O. 1970, c. 426, s. 116 (1), *amended*.

PART XXI

ENFORCEMENT

Offences, general

118.—(1) Every person or company who,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 426, s. 137 (1-3), *amended*.

Consent of Minister

119. No proceedings under section 118 shall be instituted except with the consent or under the direction of the Minister. R.S.O. 1970, c. 426, s. 138 (1).

Information containing more than one offence

120. An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1970, c. 426, s. 139.

Execution of warrant issued in another province

121.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant

for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisidction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof. R.S.O. 1970, c. 426, s. 149.

Order for compliance

122.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court for an order,

(*a*) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and

(*b*) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and upon the application the judge may make such order, or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1. R.S.O. 1970, c. 426, s. 143, *amended*.

Order to cease trading

123.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of any securities for such period as is specified in the order. R.S.O. 1970, c. 426, s. 144 (1).

Idem

(2) The Commission may issue a cease trading order under subsection 1 notwithstanding the delivery of a report to it pursuant to subsection 3 of section 74. *New.*

Temporary order

(3) No order shall be made under subsection 1 or 2 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, which shall not be for longer than fifteen days from the date of the making thereof, but the order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period. R.S.O. 1970, c. 426, s. 144 (2), *amended.*

Commission's discretion to remove exemptions

124.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that any or all of the exemptions contained in sections 34, 71, 72 and 88 do not apply to the person or company named in the order.

Temporary order and hearing

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall not be for longer than fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded.

Notice

(3) Notice of a temporary order made under subsection 2 shall be given forthwith together with the notice of the hearing under subsection 2 to every person or company who in the opinion of the Commission is directly affected thereby. R.S.O. 1970, c. 426, s. 19 (5-7), *amended.*

Limitation period

125.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the

knowledge of the Commission. R.S.O. 1970, c. 426, s. 138 (2, 3), *amended*.

PART XXII

CIVIL LIABILITY

Liability for misrepresentation in prospectus

126.—(1) Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution or distribution to the public shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against,

(*a*) the issuer or a selling security holder on whose behalf the distribution is made;

(*b*) each underwriter of the securities who is required to sign the certificate required by section 58;

(*c*) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(*d*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(*e*) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses *a* to *d*,

or, where the purchaser purchased the security from a person or company referred to in clause *a* or *b* or from another underwriter of the securities, he may elect to exercise a right of rescission against such person, company or underwriter, in which case he shall have no right of action for damages against such person, company or underwriter.

Defence

(2) No person or company is liable under subsection 1 if he proves that the purchaser purchased the securities with knowledge of the misrepresentation.

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection 1 if he proves,

(*a*) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forth-

with gave reasonable general notice that it was so filed;

(*b*) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(*c*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(*d*) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his report, opinion or statement, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(*e*) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he had reasonable grounds to believe and did believe that the statement was true.

Idem

(4) No person or company, other than the issuer or selling security holder, is liable under subsection 1 with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Idem

(5) No person or company, other than the issuer or selling security holder, is liable under subsection 1 with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Limitation re underwriters

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him.

Limitation in action for damages

(7) In an action for damages pursuant to subsection 1, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection 1 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from

any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

Limitation re amount recoverable

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

No derogation of rights

(10) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1970, c. 426, s. 142, *amended*.

Liability for misrepresentation in circular

127.—(1) Where a take-over bid circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

(*a*) every person who at the time the circular was signed was a director of the offeror;

(*b*) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(*c*) each person who signed a certificate in the circular other than the persons included in clause *a*.

Idem

(2) Where a directors' circular or a director's or officer's circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and has a right of action for damages against every director or officer who signed the circular.

Idem

(3) The provisions of subsection 1 apply *mutatis mutandis* where an issuer bid circular contains a misrepresentation.

Defence

(4) No person or company is liable under subsection 1, 2 or 3 if he proves that the offeree had knowledge of the misrepresentation.

Idem

(5) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 if he proves,

(*a*) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;

(*b*) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;

(*c*) that, with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(*d*) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert, or

(ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular; or

(*e*) that, with respect to a false statement purporting to be a statement made by an official person or

contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he had reasonable grounds to believe and did believe that the statement was true.

Idem

(6) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Idem

(7) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(*a*) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(*b*) believed there had been a misrepresentation.

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection 1, 2 or 3 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

Limitation of damages

(9) In an action for damages pursuant to subsection 1, 2 or 3 based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation.

(10) Where the offeror, Deemed take-over bid circular or issuer bid circular

(*a*) in a take-over bid exempted from the provisions of Part XIX by clause *a* of subsection 2 of section 88; or

(*b*) in an issuer bid exempted from the provisions of Part XIX by clause *c* of subsection 3 of section 88,

is required by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made to file with it or to deliver to offerees a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, sent to the offerees as required by Part XIX.

(11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the offeree may have at law. 1971, c. 31, ss. 29, 45, *amended*. No derogation of rights

128. In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 126 and 127, the standard of reasonableness shall be that required of a prudent man in the circumstances of the particular case. *New*. Standard of reasonableness

129. An offeror who, Liability for failure to make follow-up offer or to take up securities

(*a*) does not make the offer to purchase required to be made by subsection 1 of section 91 at a consideration having a value at least equal to that required thereby; or

(*b*) does not take up securities duly deposited under the offer referred to in clause *a*,

is liable to pay to the security holders entitled to receive the offer to purchase, or whose duly deposited securities were not taken up, a consideration per security equal in value to the minimum consideration at which the offer is required by that subsection to be made, or to the excess thereof over the value of the consideration actually offered, together with damages, if any. *New*.

130. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 1 of section 70 or an offeree to whom a take-over bid circular or issuer bid Liability of dealer or offeror

circular was required to be communicated but was not communicated in compliance with section 92 has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

Liability of vendor and informer where material fact or change undisclosed

131.—(1) Every person or company in a special relationship with a reporting issuer who sells the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person in a special relationship with the reporting issuer who, directly or indirectly, informs the vendor of the material fact or material change other than in the necessary course of business is liable to compensate the purchaser of the securities for damages as a result of the trade unless,

(*a*) the vendor or informer, as the case may be, had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(*b*) the material fact or material change was known or ought reasonably to have been known to the purchaser; or

(*c*) the vendor or informer, as the case may be, proves that the vendor did not make use of knowledge of the material fact or material change in selling the securities.

Liability of purchaser and informer where material fact or change undisclosed

(2) Every person or company in a special relationship with a reporting issuer who purchases the securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person in a special relationship with the reporting issuer who, directly or indirectly, informs the purchaser of the material fact or material change other than in the necessary course of business is liable to compensate the vendor of the securities for damages as a result of the trade unless,

(*a*) the purchaser or informer, as the case may be, had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(*b*) the material fact or material change was known or ought reasonably to have been known to the vendor; or

(*c*) the purchaser or informer, as the case may be, proves that the purchaser did not make use of

knowledge of the material fact or material change in purchasing the securities.

(3) Any person or company who has access to information concerning the investment program of a mutual fund in Ontario or the investment portfolio managed for a client by a portfolio manager or by a registered dealer acting as a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by the portfolio manager or registered dealer include securities of that issuer is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale. Idem

(4) Every, Accountability for gain

(*a*) vendor or informer referred to in subsection 1; and

(*b*) purchaser or informer referred to in subsection 2,

who is also an insider of the reporting issuer, or who is an associate or affiliate of such insider, is, in addition to the liability imposed by subsection 1 or 2, accountable to the reporting issuer for any benefit or advantage received or receivable by the insider or associate or affiliate, as the case may be. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

(5) The liability of, Liability joint and several

(*a*) the vendor and any informer under subsection 1; and

(*b*) the purchaser and any informer under subsection 2,

is joint and several.

(6) In assessing damages under subsection 1 or 2, the court shall consider, Measure of damages

(*a*) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; or

(*b*) if the plaintiff is a vendor, the average market price of the security in the twenty trading days

following general disclosure of the material fact or material change less the price that he received for the security,

but the court may instead consider such other measures of damages as may be relevant in the circumstances.

Interpretation

(7) For the purposes of this section, a person or company is in a special relationship with a reporting issuer where,

(*a*) the person or company is an insider or an affiliate of the reporting issuer;

(*b*) the person is a director, officer or employee of the reporting issuer or of a company that is an insider or an affiliate of the reporting issuer;

(*c*) the person or company has engaged, is engaging in or proposes to engage in any business or professional activities with or on behalf of the reporting issuer and thereby has acquired knowledge of the material fact or material change; or

(*d*) the person or company is an associate of the reporting issuer or of any person or company referred to in clause *a*, *b* or *c*. *New.*

Action by Commission on behalf of issuer

132.—(1) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection 1 or 2 of section 131 or is at the time of the application a security holder of the reporting issuer, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection 4 of section 131; and

(*b*) either,

(i) the reporting issuer has refused or failed to commence an action under section 131 within sixty days after receipt of a written request from the Commission or such person or company so to do, or

(ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 131,

make an order, upon such terms as to security for costs and otherwise as to the Judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection 4 of section 131.

Action by Commission on behalf of mutual fund

(2) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection 3 of section 131 or is at the time of the application a security holder of the mutual fund, a judge of the High Court may, if satisfied that,

(*a*) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection 3 of section 131; and

(*b*) the mutual fund has either,

(i) refused or failed to commence an action under subsection 3 of section 131 within sixty days after receipt of a written request from the Commission or the person or company so to do, or

(ii) failed to prosecute diligently an action commenced by it under subsection 3 of section 131,

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 3 of section 131.

Costs

(3) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a board of directors of a reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as

the case may be, shall be paid by the reporting issuer, if he is satisfied that the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Action by Commission on behalf of security holder of the reporting issuer

(4) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that,

(*d*) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and

(*e*) the continuance of the action is *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Idem

(5) Where an action under subsection 3 or 4 of section 131 is,

(*a*) commenced;

(*b*) commenced and prosecuted; or

(*c*) continued,

by the Commission, the trial judge or a judge of the High Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

Idem

(6) In determining whether an action or its continuance is *prima facie* in the best interests of a reporting issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action.

(7) Notice of every application under subsection 1 or 2 shall be given to the Commission, the reporting issuer, or the mutual fund, as the case may be, and each of them may appear and be heard thereon. Notice of application

(8) Every order made under subsection 1 or 2 requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action. Order to co-operate

(9) An appeal lies to the Supreme Court from any order made under this section. *New.* Appeal

133.—(1) If subsection 1 of section 38 applies to a contract and such subsection is not complied with, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased. Rescission of contract

(2) If clause *c* of subsection 1 of section 35 applies to a contract and a registered dealer has failed to comply with such subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract. R.S.O. 1970, c. 426, s. 71 (1, 2), *amended.* Idem

(3) For the purpose of subsection 2, a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail. *New.* Service

(4) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 35 or 38 is upon the registered dealer. Onus

Limitation period

(5) No action respecting a rescission shall be commenced under this section after the expiration of a period of ninety days from the date of the mailing or delivering the notice under subsection 1 or 2. R.S.O. 1970, c. 426, s. 71 (3, 4), *amended*.

Rescission of purchase of mutual fund security

134.—(1) Every purchaser of a security of a mutual fund in Ontario may, where the amount of the purchase does not exceed the sum of $50,000, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan but, subject to subsection 5, the amount the purchaser is entitled to recover on exercise of this right to rescind shall not exceed the net asset value of the securities purchased, at the time the right is exercised.

Idem

(2) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection 1 for rescinding a purchase made under a contractual plan.

Notice

(3) The notice mentioned in subsection 1 shall be in writing, and may be given by prepaid mail, telegram or other means.

Service

(4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Reimbursement

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of rescission was given. *New*.

Limitation periods

135. Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,

(*a*) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(*b*) in the case of any action, other than an action for rescission, the earlier of,

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action. *New.*

PART XXIII

GENERAL PROVISIONS

Admissibility in evidence of certified statements

136. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 426, s. 148, *amended.*

Filing and inspection of material

137.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission.

Idem

(2) Notwithstanding subsection 1, the Commission may hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection. *New.*

Immunity of Commission and officers

138.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any direction, decision, order, ruling or other requirement made or given under this Act or the regulations. R.S.O. 1970, c. 426, s. 145, *amended*.

Liability of crown

R.S.O. 1970, c. 365

(3) Subsection 1 does not, by reason of subsections 2 and 3 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection 1 to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. *New*.

Regulations

139. The Lieutenant Governor in Council may make regulations,

1. prescribing categories for persons and companies and the manner of allocating persons and companies to categories, and prescribing the form and content of prospectuses, preliminary prospectuses, *pro forma* prospectuses and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;

2. designating mutual funds or a class or classes thereof as private mutual funds;

3. designating banking transactions for the purposes of subparagraph iv of paragraph 43 of subsection 1 of section 1;

4. prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;

5. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

6. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as,

    i. investment dealer, unless he is a member of the Ontario District of the Investment Dealers' Association of Canada,

    ii. broker, unless he is a member of a stock exchange in Ontario recognized by the Commission,

    iii. broker-dealer, unless he is a member of the Broker-Dealers' Association of Ontario;

7. regulating the listing and trading of securities and records relating thereto;

8. governing the furnishing of information to the public or to the Commission by a registrant in connection with securities or trades therein;

9. regulating the trading of securities other than on a stock exchange recognized by the Commission;

10. governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;

11. respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

12. respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salesmen of shares or units of a mutual fund;

13. designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;

14. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the

Commission and other fees in connection with the administration of this Act and the regulations;

15. prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

16. prescribing the practice and procedure of investigations under sections 11 and 13;

17. prescribing the forms for use under this Act and the regulations;

18. prescribing trades or securities, in addition to the trades and securities referred to in section 34, in respect of which registration shall not be required;

19. prescribing trades or securities, referred to in section 34 in respect of which there shall cease to be exemption from registration;

20. prescribing trades or securities, in addition to the trades and securities referred to in sections 71 and 72, in respect of which section 52 does not apply;

21. prescribing trades or securities in respect of which sections 52 and 61 shall be applicable notwithstanding sections 71 and 72;

22. exempting any seller or class of sellers from the requirements of subclauses i and ii of clause *b* of subsection 7 of section 71;

23. prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

24. prescribing the practice and procedure by which the Commission recognizes exempt purchasers under paragraph 4 of subsection 1 of section 34;

25. exempting any category of registered advisers from the provisions of section 39 or varying the provisions of section 39, as they apply to any category of registered advisers;

26. prescribing the information required or permitted to be distributed under subsection 2 of section 64;

27. respecting the matters referred to in clause *h* of subsection 2 of section 60, and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;

28. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;

29. prescribing the form and content of the reports to be filed under Part XX;

30. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Part XIX or Part XX;

31. prescribing the form and content of a take-over bid circular, issuer bid circular, directors' circular and a director's or officer's circular required by Part XIX;

32. prescribing a penalty for the early redemption of shares or units of a mutual fund;

33. prescribing the form and content of proxies, information circulars and reports required by Parts XVII and XVIII;

34. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company. R.S.O. 1970, c. 426, s. 147; 1971, c. 31, s. 46, *amended*.

Commission's discretion to revoke or vary its decision

140. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations. *New*.

Continuation of registration

141. Every registration made and receipt for a prospectus issued under *The Securities Act*, being chapter 426 of the

Revised Statutes of Ontario, 1970 and in effect immediately before this Act comes into force, continues in the same manner as if made or issued under this Act. *New.*

Repeals

142. The following are repealed:

1. *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970.

2. *The Securities Amendment Act, 1971*, being chapter 31.

3. *The Securities Amendment Act, 1973*, being chapter 11.

4. Section 55 of *The Government Reorganization Act, 1972*, being chapter 1.

Commencement

143.—(1) This Act, except clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Clause *b* of subsection 1 of section 71 and subsections 4, 5, 6 and 7 of the said section 71 come into force on the day eighteen months after the coming into force of this Act, and, until that date, the exemptions set out in clauses *a*, *c*, *d*, *l* and *p* of subsection 1 of the said section 71 are available only where each purchaser takes the securities for investment only and not with a view to resale, distribution or distribution to the public.

Short title

144. The short title of this Act is *The Securities Act, 1978*.

An Act to revise The Securities Act

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

June 23rd, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

1978

Government Publications

BILL 8

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to regulate Trading in Commodity Futures Contracts

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

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Explanatory Note

The purpose of the Bill is to regulate, under the Ontario Securities Commission, trading in commodity futures contracts and in commodity futures options:

1. except for transactions by "hedgers", by permitting to be traded in Ontario only those commodity futures contracts and exchange-traded commodity futures options,

    i. entered into on a commodity futures exchange registered with or "recognized" by the Ontario Securities Commission; and

    ii. the form of which has been "accepted" for trading in Ontario by the Director of the Ontario Securities Commission;

2. by registering those persons who act as dealers or advisers;

3. by providing a regulatory framework within which any commodity futures exchange that might be established in Ontario would be supervised.

Dealt with as securities under *The Securities Act*, would be commodity futures contracts and commodity futures options which are not traded on commodity futures exchanges recognized or registered by the Ontario Securities Commission under *The Commodity Futures Act, 1978* and margin account type contracts. Trades in these securities, except those effected by "hedgers", would be subject to the registration and prospectus filing requirements of *The Securities Act*.

BILL 8 **1978**

An Act to regulate Trading in Commodity Futures Contracts

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to trading in contracts;

2. "clearing house" means an association or organization, whether incorporated or unincorporated, or part of a commodity futures exchange through which trades in contracts entered into on such exchange are cleared;

3. "Commission" means the Ontario Securities Commission;

4. "commodity" means, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations;

5. "commodity futures contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;

6. "commodity futures exchange" means an association or organization, whether incorporated or

unincorporated, operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction;

7. "commodity futures option" means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;

8. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

9. "contract" means any commodity futures contract and any commodity futures option;

10. "dealer" means a person or company that trades in contracts in the capacity of principal or agent;

11. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

12. "declaration date", where used in relation to a commodity futures option, means that date on which the option expires;

13. "Director" means the Director or any Deputy Director of the Commission;

14. "floor trader" means an individual who is employed by a dealer for the purpose of entering into contracts on the floor of a commodity futures exchange on behalf of such dealer;

15. "hedger" means a person or company who carries on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, becomes exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offsets that risk through trading in contracts for the commodity or related commodities whether or not any particular trade is effected for that purpose, but a person or company is a hedger only as to trades in contracts for such commodities or related commodities;

16. "liquidating trade" means effecting settlement of a commodity futures contract,

    (*a*) in relation to a long position, by assuming an offsetting short position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

    (*b*) in relation to a short position, by assuming an offsetting long position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

17. "long position", where used in relation to a commodity futures contract, means to be under an obligation to take delivery;

18. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

19. "misrepresentation" means an untrue statement of material fact or an omission to state a material fact;

20. "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;

21. "open commodity futures contract" means an outstanding obligation under a commodity futures contract for which settlement has not been effected by the tender and receipt of the commodity or of an instrument evidencing title or the right to such commodity or by a liquidating trade;

22. "open interest", where used in relation to commodity futures contracts, means the total outstanding long positions or the total outstanding short positions, for each delivery month and in

aggregate, in commodity futures contracts relating to a particular commodity entered into on a commodity futures exchange;

23. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

24. "premium", where used in relation to a commodity futures option, means the consideration for which the option is acquired;

25. "register" means register under this Act, and "registered" has a corresponding meaning;

26. "registrant" means a person or company registered or required to be registered under this Act;

27. "regulations" means the regulations made under this Act;

28. "salesman" means an individual who is employed by a dealer for the purpose of making trades in contracts on behalf of such dealer;

29. "Secretary" means the Secretary of the Commission or any individual designated by the Commission to act in the capacity of Secretary;

30. "security" means a security within the meaning of *The Securities Act*; R.S.O. 1970, c. 426

31. "settlement price", where used in relation to a commodity futures contract, means the price which is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open commodity futures contracts;

32. "short position", where used in relation to a commodity futures contract, means to be under an obligation to make delivery;

33. "striking price", where used in relation to a commodity futures option, means the price at which the purchaser of the option has the right to assume a long or short position in relation to the commodity futures contract that is the subject of the option;

34. "trade" or "trading" includes,

(*a*) entering into contracts, whether as principal or agent;

(*b*) acting as a floor trader;

(*c*) any receipt by a registrant of an order to effect a transaction in a contract;

(*d*) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract; and

(*e*) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

PART I

COMMODITY FUTURES ADVISORY BOARD

Commodity Futures Advisory Board

2.—(1) There shall be a board of not more than five members to be known as The Commodity Futures Advisory Board, the members of which shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Commodity Futures Advisory Board shall meet at the call of the Commission.

Duties

(3) The Commodity Futures Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning,

(*a*) developments in the nature of contracts and manner of trading; and

(*b*) the influence of trading in contracts on the economy of Ontario.

Remuneration

(4) The members of The Commodity Futures Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board.

PART II

APPOINTMENT OF EXPERTS

Appointment of experts

3.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, contract, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections 3 and 4 of section 7 apply *mutatis mutandis*.

Payment of experts

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine.

PART III

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

Notification of decision

4.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 23 or refusing to accept the form of a contract under section 36 and the Commission may, within thirty days of the decision, notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

5.—(1) Any person or company directly affected by a decision of the Commission, may appeal to the Supreme Court. Appeal

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal. Stay

(3) The Secretary shall certify to the Registrar of the Supreme Court, Certification of documents

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Minister entitled to be heard

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court, on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. Further decisions

6.—(1) The Secretary may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 5; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

Certification by Secretary

(2) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution.

PART IV

INVESTIGATIONS

Investigation order

7.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act or into any matter relating to trading in contracts, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of which the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person or company and any property, assets or things owned, acquired or alienated in whole or in part by such person or company or by any person or company acting on behalf of or as agent for such person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person or company and the relationship that may at any time exist or have existed between such person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities, contracts or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities, contracts or other property are seized under subsection 6, such documents, records, securities, contracts or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by such person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.

Report to Minister

8. Where, upon the report of an investigation made under section 7, it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister.

Investigation by order of Minister

9. Notwithstanding section 7, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in contracts, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 7.

Evidence not to be disclosed

10. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 7 or 9.

Report to Minister

11. Where an investigation has been made under section 7, the Commission may, and, where an investigation has been made under section 9, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper.

Order to freeze property

12.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts; or

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b* or *c* to hold such funds or securities or direct the person or company referred to in clause *a*, *b* or *c* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 13 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a commodity futures exchange clearing house, stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-4, W-11, R.S.O. 1970, cc. 228, 89, 53

Application for directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification.

Revocation or amendment of direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions as it may impose revoking the direction or consenting to the release of any fund or security.

Appointment of receiver, etc.

13.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts;

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company; or

(*d*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for such person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of any such person or company or of persons or companies any of whose property is in the possession or under the control of such person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. *Ex parte* application

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto. Powers of receiver, etc.

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice. Enforcement of order

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. Rules of practice

PART V

AUDITS

14.—(1) Notwithstanding anything in sections 15, 16, 17 and 18, the Commission may in writing appoint any person to examine at any time the financial affairs of a registrant or a clearing house of a commodity futures exchange in Ontario and prepare such financial or other statements and reports that may be required by the Commission. Audits by Commission

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the registrant or clearing house whose financial affairs are being examined, and no registrant or clearing house shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination. Access to records

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. Fees

PART VI

SELF REGULATION—GENERALLY

Self-regulatory bodies

15.—(1) The Commission may recognize in writing an association or organization representing registrants, whether incorporated or unincorporated, as a self-regulatory body where it is satisfied that to do so would be in the public interest and that the association or organization has satisfied or can satisfy all conditions with respect to self-regulatory bodies prescribed under the regulations.

Idem

(2) A self-regulatory body recognized under subsection 1 shall, subject to this Act and the regulations and any decision made by the Commission, regulate the standards and business conduct of its members.

Commission's powers

(3) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to any by-law, rule or regulation or proposed by-law, rule or regulation of a self-regulatory body recognized under subsection 1;

(*b*) with respect to any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1; or

(*c*) with respect to any practice of a self-regulatory body recognized under subsection 1.

Review of decisions of self-regulatory body

(4) Any person or company directly affected by any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1 may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Panel of auditors

16. Every commodity futures exchange in Ontario granted registration by the Commission under section 19 and every self-regulatory body recognized by the Commission under section 15 shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, association or organization auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years.

Audits by commodity futures exchange and self-regulatory bodies

17.—(1) Every commodity futures exchange in Ontario granted registration by the Commission and every self-regulatory body recognized by the Commission shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 16 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, association or organization auditor, as the case may be.

Audit by-laws subject to approval

(2) The by-laws, rules and regulations of every commodity futures exchange in Ontario granted registration by the Commission and the by-laws, rules and regulations of every self-regulatory body recognized by the Commission in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission.

Filing of financial statements of registrants

18. Every registrant whose financial affairs are not subject to examination under section 17 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by such registrant or an officer or partner of such registrant and reported upon by the auditor of such registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe.

PART VII

COMMODITY FUTURES EXCHANGES IN ONTARIO

Commodity futures exchanges in Ontario

19.—(1) No person or company shall carry on business as a commodity futures exchange in Ontario unless such commodity futures exchange is registered as a commodity futures exchange.

Registration

(2) Upon application by or on behalf of a person or company wishing to carry on business in Ontario as a commodity futures exchange, the Commission shall grant registration to that person or company for the purposes of subsection 1 where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest; and

(*f*) the commodity futures exchange has satisfied or can satisfy all conditions prescribed under the regulations for the conduct of the business of a commodity futures exchange.

Hearing

(3) The Commission shall not refuse to grant registration to a commodity futures exchange for the purposes of subsection 1 without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

20.—(1) Every commodity futures exchange in Ontario and its clearing house shall file with the Commission all by-laws, rules, regulations and policies as soon as practicable and in any event within five days of the date on which the by-law, rule, regulation or policy is approved by the board of directors of the commodity futures exchange or its clearing house and prior to approval by the membership of the commodity futures exchange or clearing house.

Commission's powers

(2) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to the manner in which any commodity futures exchange or its clearing house carries on business;

(*b*) with respect to any by-law, rule or regulation of any such commodity futures exchange or its clearing house; or

(*c*) with respect to trading on or through the facilities of any such commodity futures exchange or with respect to any contract traded on any such commodity futures exchange including the setting of levels of margin, daily price limits, daily trading limits and position limits.

Review of decision of commodity futures exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a commodity futures exchange in Ontario or its clearing house may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Records and reports

21. Every commodity futures exchange and its clearing house in Ontario shall keep such records as are necessary for the proper recording of each transaction on such exchange and shall,

(*a*) supply to any customer of any member of such commodity futures exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation; and

(*b*) deliver to the Commission at such time or times as the Commission may require reports as to transactions on such exchange in such form as the Commission may prescribe.

PART VIII

REGISTRATION FOR TRADING, ACTING AS ADVISER

Registration for trading

22.—(1) No person or company shall,

(*a*) trade in a contract unless such person or company is registered as a dealer or is registered as a sales-

man or floor trader or as a partner or as an officer of a registered dealer and is acting on behalf of such dealer;

(*b*) act as an adviser unless such person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of such adviser,

and such registration has been made in accordance with this Act and the regulations and such person or company has received written notice of such registration from the Director and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

Termination re salesman and floor trader

(2) The termination of the employment of a salesman or floor trader with a registered dealer shall operate as a suspension of the registration of the salesman or floor trader until notice in writing has been received by the Director from another registered dealer of the employment of the salesman or floor trader by such other registered dealer and the reinstatement of the registration has been approved by the Director.

Non-trading employee

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually trade in contracts, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman.

Granting of registration

23.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant except where,

(*a*) having regard to the applicant's financial position, he cannot reasonably be expected to be financially responsible in the conduct of his business;

(*b*) the past conduct of the applicant, or the officers, directors or partners of the applicant, affords reasonable grounds for belief that his business will not be carried on in accordance with law and with integrity and honesty; or

(*c*) the applicant is or will be carrying on activities that are in contravention of this Act or the regulations.

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in a certain class of contracts. Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. Refusal

24.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 4. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. Surrender

25. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. Subsequent applications

26. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. Application

27. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. Address for service

Further information

28. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director.

Residence

29.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of the application for registration and if he is not a resident of Ontario at the date of such application unless at the time of such application such individual is registered in a capacity corresponding to that of a dealer, adviser, partner, officer, salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of such person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration and is not a resident of Ontario at the date of such application unless at the time of such application he is registered in a capacity corresponding to that of dealer, adviser, partner, officer or salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Notice of changes

30.—(1) Every registered dealer shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) any change in,

(i) the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and floor trader and in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem (2) Every registered adviser, shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) any change in,

(i) the directors or officers of the registered adviser and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered adviser.

Idem (3) Every registered salesman and floor trader shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions (4) The Director may, upon an application of a registrant, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so.

PART IX

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

31. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1
1974-75, c. 14 (Can.)
R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer, teacher or employee of the Ministry of Agriculture and Food;

(*c*) a registered dealer, or any partner, officer or employee thereof;

R.S.O. 1970, c. 426

(*d*) a person or company registered as an adviser under *The Securities Act*, or any partner, officer or employee thereof;

(*e*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the contracts upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*f*) such other persons or companies as are designated by the regulations.

Exemption of trades

32.—(1) Subject to the regulations, registration is not required in respect of,

(*a*) a trade in a contract by a hedger through a dealer;

(*b*) a trade in a contract by a person or company acting solely through an agent who is a registered dealer;

(*c*) a trade in a contract to be executed on an exchange situate outside Ontario resulting from an order placed with a dealer carrying on business outside Ontario, not involving any solicitation by or on behalf of the dealer; or

(*d*) a trade in a contract in respect of which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*. R.S.O. 1970, c. 426

PART X

RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Registration or recognition of commodity futures exchange and acceptance of form of contracts required

33. No person or company, except a hedger, shall trade in contracts on his own account or on behalf of any other person or company except,

(*a*) contracts traded on a commodity futures exchange, registered by the Commission or recognized by the Commission under this Part;

(*b*) contracts for which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*; and

(*c*) a contract traded on a commodity futures exchange situate outside Ontario as the result of an order placed with a dealer carrying on business outside Ontario, not involving any solicitation by or on behalf of the dealer.

Recognition of commodity futures exchange by Commission

34.—(1) Upon application by or on behalf of a commodity futures exchange that is situate outside Ontario, the Commission shall recognize such commodity futures exchange where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest;

(*f*) the exchange and its clearing house have undertaken to comply with section 35; and

(*g*) the exchange and its clearing house are subject to regulation by the Government of Canada, any other province of Canada, the United Kingdom or the United States of America, or any agency thereof.

Hearing

(2) The Commission shall not refuse to recognize a commodity futures exchange under this Part without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

35. Every commodity futures exchange recognized by the Commission under section 34 and its clearing house shall file with the Commission all by-laws, rules, regulations and policies as soon as practicable and in any event within ten days of the date on which the by-law, rule, regulation or policy is approved by the Board of Directors of the commodity futures exchange or clearing house.

Acceptance of form of contracts by Director

36.—(1) Upon application by or on behalf of a commodity futures exchange registered by the Commission, or recognized by the Commission under this Part, and the filing of a copy of all terms and conditions of a contract that it is proposed be traded in Ontario, the Director shall accept the form of contract where he is satisfied that to do so would not be prejudicial to the public interest and in making his decision shall take into account whether,

(*a*) more than occasional use is made or can be reasonably expected to be made of the contract for hedging transactions;

(*b*) with respect to a commodity futures contract each term or condition is in conformity with normal

commercial practices of the trade in the commodity or if not in such conformity there is reasonable justification therefor;

(*c*) with respect to a commodity futures contract satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;

(*d*) with respect to a commodity futures option the form of the commodity futures contract that is the subject of the option has been accepted under this Part; and

(*e*) with respect to a commodity futures option performance on exercise of the option is reasonably assured by established rules and procedures that are actively enforced.

Hearing

(2) The Director shall not refuse to accept the form of contract without giving the applicant an opportunity to be heard.

Terms and conditions of contracts to be filed with Commission and available through agent

37.—(1) It is a condition of acceptance of the form of a contract under section 36 that the commodity futures exchange,

(*a*) file with the Commission copies of all current contract terms and conditions; and

(*b*) unless the Director by order modifies the requirement, make copies of all current contract terms and conditions available to registrants through an agent in Ontario designated by the commodity futures exchange.

Idem

(2) Copies of amendments or additions to contract terms and conditions shall be filed with the Commission and supplied to the agent designated by the commodity futures exchange as soon as practicable and in any event within ten days of the date on which the amendment or addition is approved by the Board of Directors of the commodity futures exchange.

Idem

(3) The Director shall not accept the form of a contract until advised by the commodity futures exchange of the name and address of the agent designated for the purposes of subsection 1.

Idem

(4) The commodity futures exchange shall, within five days of the event, notify the Director of any change in the name or address of the agent designated for the purposes of subsection 1.

Order exempting from registration for trading, acceptance of form of contract

38.—(1) The Commission may upon the application of an interested person or company, rule that an intended trade is not subject to section 22 or 33 where it is satisfied to do so will not be prejudicial to the public interest and may impose such terms and conditions as are considered necessary.

Ruling final

(2) A decision of the Commission under this section is final and there is no appeal therefrom.

PART XI

REVOCATION OF REGISTRATION OR RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Order revoking registration or recognition of commodity futures exchange or acceptance of form of contract

39.—(1) The Commission may, where in its opinion such action is in the public interest, and, subject to such terms and conditions as it may impose, by order revoke registration of a commodity futures exchange under Part VII or recognition of a commodity futures exchange under Part X or revoke acceptance of the form of a contract under Part X for such period as is specified in the order.

Temporary order

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, that shall not be for longer than fifteen days from the date of the making thereof, but such order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period.

PART XII

TRADING GENERALLY

Statement to be furnished to prospective customer

40.—(1) Every registered dealer or adviser shall furnish each prospective customer prior to the opening of his account with a written statement in the form prescribed under the regulations which will,

(*a*) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the customer upon entering a contract;

(*b*) advise the client to request and study the terms and conditions of the contract; and

(*c*) furnish details concerning commissions and other charges levied by the dealer or adviser.

Terms and conditions

(2) Every registered dealer or adviser upon the request of a client shall furnish the client with a copy of all current terms and conditions of any contract the form of which has been accepted by the Director under Part X.

Minimum margin required

41.—(1) Subject to subsections 2 and 3, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed under the by-laws, rules or regulations of the commodity futures exchange upon which the contract is traded.

Idem

(2) Subject to subsection 3, where the Commission has made an order with respect to levels of margin under section 20, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed thereunder.

Margin greater than minimum

(3) Notwithstanding subsections 1 and 2, a registered dealer may require from the customer a margin greater than that prescribed under subsection 2 or 3.

Confirmation of trade re commodity futures contract

42.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures contract, including a trade upon the exercise of a commodity futures option, shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the date of the transaction;

(*b*) the commodity and quantity bought or sold;

(*c*) the commodity futures exchange upon which the contract was traded;

(*d*) the delivery month and year;

(*e*) the price at which the contract was entered into;

(*f*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade; and

(*g*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *f* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure of clients

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures contract shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the commodity was bought or sold.

Statement of purchase and sale

43. Every registered dealer who has acted as an agent in connection with a liquidating trade in a commodity futures contract shall promptly send by prepaid mail or deliver to the customer in addition to the written confirmation required under section 42, a statement of purchase and sale setting forth,

(*a*) the dates of the initial transaction and liquidating trade;

(*b*) the commodity and quantity bought and sold;

(*c*) the commodity futures exchange upon which the contracts were traded;

(*d*) the delivery month and year;

(*e*) the prices on the initial transaction and on the liquidating trade;

(*f*) the gross profit or loss on the transactions;

(*g*) the commission; and

(*h*) the net profit or loss on the transactions.

Monthly statement

44. So long as any unexpired and unexercised commodity futures option or open commodity futures contract is outstanding in a customer's account, every registered dealer shall promptly send by prepaid mail or deliver to each customer a written statement prepared as of the last business day of each month, setting forth,

(*a*) the opening cash balance for the month in the customer's account;

(*b*) all deposits, credits, withdrawals and debits to the customer's account;

(*c*) the cash balance in the customer's account as of the last business day of the month;

(*d*) each unexpired and unexercised commodity futures option as of the last business day of the month;

(*e*) the striking price of each unexpired and unexercised commodity futures option;

(*f*) the settlement price as of the last business day of the month of the commodity futures contract that is the subject of each unexpired and unexercised commodity futures option;

(*g*) each open commodity futures contract as of the last business day of the month;

(*h*) the price at which each open commodity futures contract was entered into;

(*i*) the settlement price as of the last business day of the month of each open commodity futures contract;

(*j*) the amount that the equity in the account has increased or decreased as a result of the difference between the sums called for under clauses *h* and *i*; and

(*k*) the total of the sums called for under clauses *c* and *j*.

Confirmation of trade re commodity futures option

45.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures option shall promptly send by prepaid mail or

deliver to the customer a written confirmation of the transaction setting forth,

(*a*) the date of the transaction;

(*b*) the type and number of commodity futures options;

(*c*) the commodity futures exchange upon which the contract was traded;

(*d*) the premium;

(*e*) the commodity futures contract that is the subject of the commodity futures option;

(*f*) the delivery month and year of the commodity futures contract that is the subject of the commodity futures option;

(*g*) the declaration date;

(*h*) the striking price;

(*i*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade;

(*j*) the commission, if any, charged in respect of the trade; and

(*k*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *i* and *k* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure by agent

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures option shall promptly disclose to the Commission, upon request by the Commission,

the name of the person or company from or through whom the commodity futures option was obtained.

Trust fund

46.—(1) All money, securities and property received by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers constitute a trust fund in his hands for the benefit of the customers for whom they are held, and the registered dealer is the trustee of all such money, securities, properties and funds so received by him for which he shall separately account and shall not commingle with his funds nor use to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any customer other than the customer for whom such money, securities, property or funds are held.

Idem

(2) Notwithstanding subsection 1, the registered dealer may have a residual financial interest in the trust fund and, from time to time, may advance to the trust from his own funds sufficient funds to prevent any and all customers' accounts from becoming undermargined.

Exemption on terms and conditions

(3) Upon application by an interested person or company, the Commission may exempt any registered dealer or class of registered dealers from compliance with subsection 1, on such terms and conditions as in the opinion of the Commission provide reasonable protection for customers.

Effect of drawing upon fund where customer's account under-margined

(4) Notwithstanding subsection 1, where a registered dealer has a residual financial interest in the trust fund or has advanced his own funds to the trust to prevent any customer's account from becoming undermargined, his drawing upon the fund to his own order to the extent of his residual financial interest therein or to the extent of the actual advances made, shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Reports

47. Every registered dealer shall deliver to the Commission, at such time or times as the Commission may require, reports as to transactions in contracts on its own account or on behalf of any other person or company in such form as the Commission may prescribe.

Order prohibiting calls to residences

48.—(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named in the order to,

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any contract.

Hearing

(2) The Director shall not make an order under subsection 1 without giving the person or company affected an opportunity to be heard.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on his or its behalf.

Representations prohibited

49.—(1) No person or company, with the intention of effecting a trade in a contract, shall make any representation that he or any other person or company,

(*a*) will refund all or any of the margin or premium; or

(*b*) assume all or any part of the obligation of another person or company under the contract.

Future value

(2) No person or company, with the intention of effecting a trade in a contract, shall give any undertaking, written or oral, relating to the future value of such contract.

Use of name of another registrant

50. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant.

Registration not to be advertised

51. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered.

Holding out by unregistered person

52. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered.

Advertising approval by Commission

53. No person or company shall make any representation, written or oral, that the Commission has in any way

passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any contract.

Disclosure of financial interest of dealers and advisers

54. Every registered dealer or adviser who recommends a trade in a commodity futures contract in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it shall state in type not less legible than that used in the body of the publication whether it has a financial interest, direct or indirect, in the class of commodity futures contract recommended.

Submission of advertising

55.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that a registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature that the registered dealer proposes to use in connection with trading in contracts.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except terms and conditions of contracts and the written statement required under section 41, designed for use in a presentation to a customer or prospective customer, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order under subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made under subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so.

PART XIII

ENFORCEMENT

Offences, general

56.—(1) Every person or company that,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or to any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, return, financial statement, or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) otherwise contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a company or a person other than an individual, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000, or to imprisonment for a term of not more than one year.

Consent of Minister

57. No proceedings under section 56 shall be instituted except with the consent or under the direction of the Minister.

Information containing more than one offence

58. An information in respect of any contravention of this Act may be for one or more offences and no information, summons, warrant, conviction or other proceeding in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Execution of warrant issued in another province

59.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof.

Order for compliance

60.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court designated by the Chief Justice of the High Court for an order,

(*a*) directing such person or company to comply with such decision or provision or restraining such person or company from violating such decision or provision; and

(*b*) directing the directors and senior officers of such person or company to cause such person or company to comply with or to cease violating any such decision or provision,

and, upon the application, the judge may make such order or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Limitation period

61.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission.

PART XIV

GENERAL PROVISIONS

Refunds

62. Where,

(*a*) an application for registration or renewal of registration is abandoned;

(*b*) an application for recognition of a commodity futures exchange is abandoned; or

(*c*) an application for acceptance of the form of contract is abandoned,

the Director may, upon the application of the person or company who made the application recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund.

Admissibility in evidence of certified statements

63. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date of the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof, or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

Material available for inspection

64. Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall be made available by the Commission for public inspection during the normal business hours of the Commission.

Immunity of Commission and officers

65.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission done or omitted in compliance or intended compliance with any requirement, order or direction made or given under this Act or the regulations.

Regulations

66. The Lieutenant Governor in Council may make regulations,

1. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

2. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category;

3. governing the furnishing of information to the public or to the Commission by a registrant in connection with contracts or trades therein;

4. designating any person or company or any class of persons or companies that shall not be required to obtain registration as an adviser;

5. designating any goods, article, service, right or interest, or class thereof, a commodity;

6. prescribing conditions for the conduct of the business of a commodity futures exchange;

7. prescribing conditions precedent to the recognition of self-regulatory bodies under section 15;

8. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;

9. prescribing the documents, certificates, reports, releases, statements, agreements and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

10. prescribing the practice and procedure of investigations under sections 7 and 9;

11. prescribing the forms for use under this Act and the regulations;

12. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company in respect of a contract;

13. prescribing the form and content of the written statement required by section 40;

14. respecting terms of the trust imposed under section 46;

15. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company.

Commission's discretion to revoke or vary its decision

67. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose

revoking or varying any decisions made by it under this Act or the regulations.

Commencement

68. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

69. The short title of this Act is *The Commodity Futures Act, 1978*.

An Act to regulate Trading
in Commodity Futures Contracts

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

The Hon. L. Grossman
Minister of Consumer and
Commercial Relations

(*Government Bill*)

1978

Government Publications

BILL 8 **Government Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to regulate Trading in Commodity Futures Contracts

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

(Reprinted as amended by the Administration of Justice Committee)

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Explanatory Note

The purpose of the Bill is to regulate, under the Ontario Securities Commission, trading in commodity futures contracts and in commodity futures options:

1. except for transactions by "hedgers", by permitting to be traded in Ontario only those commodity futures contracts and exchange-traded commodity futures options,

    i. entered into on a commodity futures exchange registered with or "recognized" by the Ontario Securities Commission; and

    ii. the form of which has been "accepted" for trading in Ontario by the Director of the Ontario Securities Commission;

2. by registering those persons who act as dealers or advisers;

3. by providing a regulatory framework within which any commodity futures exchange that might be established in Ontario would be supervised.

Dealt with as securities under *The Securities Act*, would be commodity futures contracts and commodity futures options which are not traded on commodity futures exchanges recognized or registered by the Ontario Securities Commission under *The Commodity Futures Act, 1978* and margin account type contracts. Trades in these securities, except those effected by "hedgers", would be subject to the registration and prospectus filing requirements of *The Securities Act*.

BILL 8 **1978**

An Act to regulate Trading in Commodity Futures Contracts

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to trading in contracts;

2. "clearing house" means an association or organization, whether incorporated or unincorporated, or part of a commodity futures exchange through which trades in contracts entered into on such exchange are cleared;

3. "Commission" means the Ontario Securities Commission;

4. "commodity" means, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations;

5. "commodity futures contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;

6. "commodity futures exchange" means an association or organization, whether incorporated or

unincorporated, operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction;

7. "commodity futures option" means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;

8. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

9. "contract" means any commodity futures contract and any commodity futures option;

10. "dealer" means a person or company that trades in contracts in the capacity of principal or agent;

11. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

12. "declaration date", where used in relation to a commodity futures option, means that date on which the option expires;

13. "Director" means the Director or any Deputy Director of the Commission;

14. "floor trader" means an individual who is employed by a dealer for the purpose of entering into contracts on the floor of a commodity futures exchange on behalf of such dealer;

15. "hedger" means a person or company who carries on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, becomes exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offsets that risk through trading in contracts for the commodity or related commodities whether or not any particular trade is effected for that purpose, but a person or company is a hedger only as to trades in contracts for such commodity or related commodities;

16. "liquidating trade" means effecting settlement of a commodity futures contract,

    (*a*) in relation to a long position, by assuming an offsetting short position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

    (*b*) in relation to a short position, by assuming an offsetting long position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

17. "long position", where used in relation to a commodity futures contract, means to be under an obligation to take delivery;

18. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

19. "misrepresentation" means an untrue statement of material fact or an omission to state a material fact;

20. "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;

21. "open commodity futures contract" means an outstanding obligation under a commodity futures contract for which settlement has not been effected by the tender and receipt of the commodity or of an instrument evidencing title or the right to such commodity or by a liquidating trade;

22. "open interest", where used in relation to commodity futures contracts, means the total outstanding long positions or the total outstanding short positions, for each delivery month and in

aggregate, in commodity futures contracts relating to a particular commodity entered into on a commodity futures exchange;

23. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

24. "premium", where used in relation to a commodity futures option, means the consideration for which the option is acquired;

25. "register" means register under this Act, and "registered" has a corresponding meaning;

26. "registrant" means a person or company registered or required to be registered under this Act;

27. "regulations" means the regulations made under this Act;

28. "salesman" means an individual who is employed by a dealer for the purpose of making trades in contracts on behalf of such dealer;

29. "Secretary" means the Secretary of the Commission or any individual designated by the Commission to act in the capacity of Secretary;

30. "security" means a security within the meaning of *The Securities Act*; R.S.O. 1970, c. 426

31. "settlement price", where used in relation to a commodity futures contract, means the price which is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open commodity futures contracts;

32. "short position", where used in relation to a commodity futures contract, means to be under an obligation to make delivery;

33. "striking price", where used in relation to a commodity futures option, means the price at which the purchaser of the option has the right to assume a long or short position in relation to the commodity futures contract that is the subject of the option;

34. "trade" or "trading" includes,

(*a*) entering into contracts, whether as principal or agent;

(*b*) acting as a floor trader;

(*c*) any receipt by a registrant of an order to effect a transaction in a contract;

(*d*) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract; and

(*e*) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

PART I

COMMODITY FUTURES ADVISORY BOARD

Commodity Futures Advisory Board

2.—(1) There shall be a board of not more than five members to be known as The Commodity Futures Advisory Board, the members of which shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Commodity Futures Advisory Board shall meet at the call of the Commission.

Duties

(3) The Commodity Futures Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning,

(*a*) developments in the nature of contracts and manner of trading; and

(*b*) the influence of trading in contracts on the economy of Ontario.

Remuneration

(4) The members of The Commodity Futures Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board.

PART II

APPOINTMENT OF EXPERTS

Appointment of experts

3.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, contract, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections 3 and 4 of section 7 apply *mutatis mutandis*.

Payment of experts

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine.

PART III

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

Notification of decision

4.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 23 or refusing to accept the form of a contract under section 36 and the Commission may, within thirty days of the decision, notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

5.—(1) Any person or company directly affected by a decision of the Commission, may appeal to the Supreme Court. Appeal

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal. Stay

(3) The Secretary shall certify to the Registrar of the Supreme Court, Certification of documents

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Minister entitled to be heard

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. Further decisions

6.—(1) The Secretary may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 5; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

Certification by Secretary

(2) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution.

PART IV

INVESTIGATIONS

Investigation order

7.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act or into any matter relating to trading in contracts, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of which the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person or company and any property, assets or things owned, acquired or alienated in whole or in part by such person or company or by any person or company acting on behalf of or as agent for such person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person or company and the relationship that may at any time exist or have existed between such person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities, contracts or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities, contracts or other property are seized under subsection 6, such documents, records, securities, contracts or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by such person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.

Report to Minister

8. Where, upon the report of an investigation made under section 7, it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister.

Investigation by order of Minister

9. Notwithstanding section 7, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in contracts, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 7.

Evidence not to be disclosed

10. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 7 or 9.

11. Where an investigation has been made under section 7, the Commission may, and, where an investigation has been made under section 9, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. Report to Minister

12.—(1) The Commission may, Order to freeze property

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts; or

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b* or *c* to hold such funds or securities or direct the person or company referred to in clause *a*, *b* or *c* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 13 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a commodity futures exchange clearing house, stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction. R.S.C. 1970, cc. B-4, W-11, R.S.O. 1970, cc. 228, 89, 53

Application for directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification.

Revocation or amendment of direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions as it may impose revoking the direction or consenting to the release of any fund or security.

Appointment of receiver, etc.

13.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts;

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company; or

(*d*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for such person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of any such person or company or of persons or companies any of whose property is in the possession or under the control of such person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. *Ex parte* application

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto. Powers of receiver, etc.

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice. Enforcement of order

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. Rules of practice

PART V

AUDITS

14.—(1) Notwithstanding anything in sections 15, 16, 17 and 18, the Commission may in writing appoint any person to examine at any time the financial affairs of a registrant or a clearing house of a commodity futures exchange in Ontario and prepare such financial or other statements and reports that may be required by the Commission. Audits by Commission

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the registrant or clearing house whose financial affairs are being examined, and no registrant or clearing house shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination. Access to records

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. Fees

PART VI

SELF REGULATION—GENERALLY

Self-regulatory bodies

15.—(1) The Commission may recognize in writing an association or organization representing registrants, whether incorporated or unincorporated, as a self-regulatory body where it is satisfied that to do so would be in the public interest and that the association or organization has satisfied or can satisfy all conditions with respect to self-regulatory bodies prescribed under the regulations.

Idem

(2) A self-regulatory body recognized under subsection 1 shall, subject to this Act and the regulations and any decision made by the Commission, regulate the standards and business conduct of its members.

Commission's powers

(3) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to any by-law, rule or regulation or proposed by-law, rule or regulation of a self-regulatory body recognized under subsection 1;

(*b*) with respect to any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1; or

(*c*) with respect to any practice of a self-regulatory body recognized under subsection 1.

Review of decisions of self-regulatory body

(4) Any person or company directly affected by any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1 may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Panel of auditors

16. Every commodity futures exchange in Ontario granted registration by the Commission under section 19 and every self-regulatory body recognized by the Commission under section 15 shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, association or organization auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years.

Audits by commodity futures exchange and self-regulatory bodies

17.—(1) Every commodity futures exchange in Ontario granted registration by the Commission and every self-regulatory body recognized by the Commission shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 16 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, association or organization auditor, as the case may be.

Audit by-laws subject to approval

(2) The by-laws, rules and regulations of every commodity futures exchange in Ontario granted registration by the Commission and the by-laws, rules and regulations of every self-regulatory body recognized by the Commission in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission.

Filing of financial statements of registrants

18. Every registrant whose financial affairs are not subject to examination under section 17 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by such registrant or an officer or partner of such registrant and reported upon by the auditor of such registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe.

PART VII

COMMODITY FUTURES EXCHANGES IN ONTARIO

Commodity futures exchanges in Ontario

19.—(1) No person or company shall carry on business as a commodity futures exchange in Ontario unless such commodity futures exchange is registered as a commodity futures exchange.

Registration

(2) Upon application by or on behalf of a person or company wishing to carry on business in Ontario as a commodity futures exchange, the Commission shall grant registration to that person or company for the purposes of subsection 1 where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest; and

(*f*) the commodity futures exchange has satisfied or can satisfy all conditions prescribed under the regulations for the conduct of the business of a commodity futures exchange.

Hearing

(3) The Commission shall not refuse to grant registration to a commodity futures exchange for the purposes of subsection 1 without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

20.—(1) Every commodity futures exchange in Ontario and its clearing house shall file with the Commission all by-laws, rules, regulations and policies as soon as practicable and in any event within five days of the date on which the by-law, rule, regulation or policy is approved by the board of directors of the commodity futures exchange or its clearing house and prior to approval by the membership of the commodity futures exchange or clearing house.

Commission's powers

(2) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to the manner in which any commodity futures exchange in Ontario or its clearing house carries on business;

(*b*) with respect to any by-law, rule or regulation of any such commodity futures exchange or its clearing house; or

(*c*) with respect to trading on or through the facilities of any such commodity futures exchange or with respect to any contract traded on any such commodity futures exchange including the setting of levels of margin, daily price limits, daily trading limits and position limits.

Review of decision of commodity futures exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a commodity futures exchange in Ontario or its clearing house may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Records and reports

21. Every commodity futures exchange and its clearing house in Ontario shall keep such records as are necessary for the proper recording of each transaction on such exchange and shall,

(*a*) supply to any customer of any member of such commodity futures exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation; and

(*b*) deliver to the Commission at such time or times as the Commission may require reports as to transactions on such exchange in such form as the Commission may prescribe.

PART VIII

REGISTRATION FOR TRADING, ACTING AS ADVISER

Registration for trading

22.—(1) No person or company shall,

(*a*) trade in a contract unless such person or company is registered as a dealer or is registered as a sales-

man or floor trader or as a partner or as an officer of a registered dealer and is acting on behalf of such dealer;

(*b*) act as an adviser unless such person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of such adviser,

and such registration has been made in accordance with this Act and the regulations and such person or company has received written notice of such registration from the Director and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

Termination re salesman and floor trader

(2) The termination of the employment of a salesman or floor trader with a registered dealer shall operate as a suspension of the registration of the salesman or floor trader until notice in writing has been received by the Director from another registered dealer of the employment of the salesman or floor trader by such other registered dealer and the reinstatement of the registration has been approved by the Director.

Non-trading employee

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually trade in contracts, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman.

Granting of registration

23.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant except where,

(*a*) having regard to the applicant's financial position, he cannot reasonably be expected to be financially responsible in the conduct of his business;

(*b*) the past conduct of the applicant, or the officers, directors or partners of the applicant, affords reasonable grounds for belief that his business will not be carried on in accordance with law and with integrity and honesty; or

(*c*) the applicant is or will be carrying on activities that are in contravention of this Act or the regulations.

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in a certain class of contracts. Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. Refusal

24.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 4. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. Surrender

25. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. Subsequent applications

26. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. Application

27. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. Address for service

Further information

28. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director.

Residence

29.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of the application for registration or if he is not a resident of Ontario at the date of such application unless at the time of such application such individual is registered in a capacity corresponding to that of a dealer, adviser, partner, officer, salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of such person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration or is not a resident of Ontario at the date of such application unless at the time of such application he is registered in a capacity corresponding to that of dealer, adviser, partner, officer or salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Notice of changes

30.—(1) Every registered dealer shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) any change in,

(i) the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and floor trader and in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem (2) Every registered adviser, shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) any change in,

(i) the directors or officers of the registered adviser and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered adviser.

Idem (3) Every registered salesman and floor trader shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions (4) The Director may, upon an application of a registrant, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so.

PART IX

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

31. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1
1974-75, c. 14 (Can.)
R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer, teacher or employee of the Ministry of Agriculture and Food;

(*c*) a registered dealer, or any partner, officer or employee thereof;

R.S.O. 1970, c. 426

(*d*) a person or company registered as an adviser under *The Securities Act*, or any partner, officer or employee thereof;

(*e*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the contracts upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*f*) such other persons or companies as are designated by the regulations.

Exemption of trades

32.—(1) Subject to the regulations, registration is not required in respect of,

(*a*) a trade in a contract by a hedger through a dealer;

(*b*) a trade in a contract by a person or company acting solely through an agent who is a registered dealer;

(*c*) a trade in a contract to be executed on an exchange situate outside Ontario resulting from an order placed with a dealer who does not carry on business in Ontario, not involving any solicitation by or on behalf of the dealer; or

(*d*) a trade in a contract in respect of which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*. R.S.O. 1970, c. 426

PART X

RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Registration or recognition of commodity futures exchange and acceptance of form of contracts required

33. No person or company, except a hedger, shall trade in contracts on his own account or on behalf of any other person or company except,

(*a*) contracts traded on a commodity futures exchange, registered by the Commission or recognized by the Commission under this Part, if the form of the contracts has been approved by the Director under this Part;

(*b*) contracts for which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*; and

(*c*) a contract traded on a commodity futures exchange situate outside Ontario as the result of an order placed with a dealer who does not carry on business in Ontario, not involving any solicitation by or on behalf of the dealer.

Recognition of commodity futures exchange by Commission

34.—(1) Upon application by or on behalf of a commodity futures exchange that is situate outside Ontario, the Commission shall recognize such commodity futures exchange where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest;

(*f*) the exchange and its clearing house have undertaken to comply with section 35; and

(*g*) the exchange and its clearing house are subject to appropriate government controls.

Hearing

(2) The Commission shall not refuse to recognize a commodity futures exchange under this Part without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

35. Every commodity futures exchange recognized by the Commission under section 34 and its clearing house shall file with the Commission all by-laws, rules, regulations and policies forthwith after the by-law, rule, regulation or policy is approved by the Board of Directors of the commodity futures exchange or clearing house.

Acceptance of form of contracts by Director

36.—(1) Upon application by or on behalf of a commodity futures exchange registered by the Commission, or recognized by the Commission under this Part, and the filing of a copy of all terms and conditions of a contract that it is proposed be traded in Ontario, the Director shall accept the form of contract where he is satisfied that to do so would not be prejudicial to the public interest and in making his decision shall take into account whether,

(*a*) more than occasional use is made or can be reasonably expected to be made of the contract for hedging transactions;

(*b*) with respect to a commodity futures contract each term or condition is in conformity with normal

commercial practices of the trade in the commodity or if not in such conformity there is reasonable justification therefor;

(*c*) with respect to a commodity futures contract satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;

(*d*) with respect to a commodity futures option the form of the commodity futures contract that is the subject of the option has been accepted under this Part; and

(*e*) with respect to a commodity futures option performance on exercise of the option is reasonably assured by established rules and procedures that are actively enforced.

Hearing

(2) The Director shall not refuse to accept the form of contract without giving the applicant an opportunity to be heard.

Terms and conditions of contracts to be filed with Commission and available through agent

37.—(1) It is a condition of acceptance of the form of a contract under section 36 that the commodity futures exchange,

(*a*) file with the Commission copies of all current contract terms and conditions; and

(*b*) unless the Director by order modifies the requirement, make copies of all current contract terms and conditions available to registrants through an agent in Ontario designated by the commodity futures exchange.

Idem

(2) Copies of amendments or additions to contract terms and conditions shall be filed with the Commission and supplied to the agent designated by the commodity futures exchange forthwith after the amendment or addition is approved by the Board of Directors of the commodity futures exchange.

Idem

(3) The Director shall not accept the form of a contract until advised by the commodity futures exchange of the name and address of the agent designated for the purposes of subsection 1.

Idem

(4) The commodity futures exchange shall, within five days of the event, notify the Director of any change in the name or address of the agent designated for the purposes of subsection 1.

Order exempting from registration for trading, acceptance of form of contract

38.—(1) The Commission may upon the application of an interested person or company, rule that an intended trade is not subject to section 22 or 33 where it is satisfied that to do so will not be prejudicial to the public interest and may impose such terms and conditions as are considered necessary.

Ruling final

(2) A decision of the Commission under this section is final and there is no appeal therefrom.

PART XI

REVOCATION OF REGISTRATION OR RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Order revoking registration or recognition of commodity futures exchange or acceptance of form of contract

39.—(1) The Commission may, where in its opinion such action is in the public interest, and, subject to such terms and conditions as it may impose, by order revoke registration of a commodity futures exchange under Part VII or recognition of a commodity futures exchange under Part X or revoke acceptance of the form of a contract under Part X for such period as is specified in the order.

Temporary order

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, that shall not be for longer than fifteen days from the date of the making thereof, but such order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period.

PART XII

TRADING GENERALLY

Statement to be furnished to prospective customer

40.—(1) Every registered dealer or adviser shall furnish each prospective customer prior to the opening of his account with a written statement in the form prescribed under the regulations which will,

(*a*) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the customer upon entering a contract;

(*b*) advise the client to request and study the terms and conditions of the contract; and

(*c*) furnish details concerning commissions and other charges levied by the dealer or adviser.

Terms and conditions

(2) Except where the Director by order modifies the requirement, every registered dealer or adviser upon the request of a client shall furnish the client with a copy of all current terms and conditions of any contract the form of which has been accepted by the Director under Part X.

Minimum margin required

41.—(1) Subject to subsections 2 and 3, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed under the by-laws, rules or regulations of the commodity futures exchange upon which the contract is traded.

Idem

(2) Subject to subsection 3, where the Commission has made an order with respect to levels of margin under section 20, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed thereunder.

Margin greater than minimum

(3) Notwithstanding subsections 1 and 2, a registered dealer may require from the customer a margin greater than that prescribed under subsection 2 or 3.

Confirmation of trade re commodity futures contract

42.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures contract, including a trade upon the exercise of a commodity futures option, shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the date of the transaction;

(*b*) the commodity and quantity bought or sold;

(*c*) the commodity futures exchange upon which the contract was traded;

(*d*) the delivery month and year;

(*e*) the price at which the contract was entered into;

(*f*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade; and

(*g*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *f* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure of clients

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures contract shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the commodity was bought or sold.

Statement of purchase and sale

43. Every registered dealer who has acted as an agent in connection with a liquidating trade in a commodity futures contract shall promptly send by prepaid mail or deliver to the customer in addition to the written confirmation required under section 42, a statement of purchase and sale setting forth,

(*a*) the dates of the initial transaction and liquidating trade;

(*b*) the commodity and quantity bought and sold;

(*c*) the commodity futures exchange upon which the contracts were traded;

(*d*) the delivery month and year;

(*e*) the prices on the initial transaction and on the liquidating trade;

(*f*) the gross profit or loss on the transactions;

(*g*) the commission; and

(*h*) the net profit or loss on the transactions.

Monthly statement

44. So long as any unexpired and unexercised commodity futures option or open commodity futures contract is outstanding in a customer's account, every registered dealer shall promptly send by prepaid mail or deliver to each customer a written monthly statement, setting forth,

(*a*) the opening cash balance for the month in the customer's account;

(*b*) all deposits, credits, withdrawals and debits to the customer's account;



(*c*) the cash balance in the customer's account;

(*d*) each unexpired and unexercised commodity futures option;



(*e*) the striking price of each unexpired and unexercised commodity futures option;



(*f*) each open commodity futures contract;



(*g*) the price at which each open commodity futures contract was entered into.

Confirmation of trade re commodity futures option

45.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures option shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction setting forth,

(*a*) the date of the transaction;

(*b*) the type and number of commodity futures options;

(*c*) the commodity futures exchange upon which the contract was traded;

(*d*) the premium;

(*e*) the commodity futures contract that is the subject of the commodity futures option;

(*f*) the delivery month and year of the commodity futures contract that is the subject of the commodity futures option;

(*g*) the declaration date;

(*h*) the striking price;

(*i*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade;

(*j*) the commission, if any, charged in respect of the trade; and

(*k*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *i* and *k* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure by agent

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures option shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or through whom the commodity futures option was obtained.

Segregation of funds

46.—(1) All money, securities, property and proceeds of loans received or advanced by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers, shall be segregated for the benefit of the customers for whom they are held, and the registered dealer shall separately account for all such money, securities, property, proceeds and funds so received or advanced by him, and shall not knowingly commingle such money, securities, property, proceeds and funds with his own money, securities, property and funds.

Application

(2) Subsection 1 does not apply to securities or property that are subject to a lien or charge in favour of the registered dealer under a written agreement, in the form prescribed by the regulations, to secure loans referred to in subsection 1.

(3) Money, securities, property, proceeds and funds segregated under subsection 1 for the benefit of customers may be commingled. Commingling of segregated funds

(4) No registered dealer shall knowingly use money, securities, property, proceeds or funds received from, advanced to or held for any customer to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any customer other than the customer for whom such money, securities, property, proceeds or funds are held. Registered dealer not to use funds

(5) Notwithstanding subsection 1, a registered dealer may have a residual financial interest in a customer's account and, from time to time, may advance from his own funds sufficient funds to prevent any and all customer's accounts from becoming undermargined. Residual financial interest

(6) Upon application by an interested person or company, the Commission may exempt any registered dealer or class of registered dealers from subsection 1 or 4, on such terms and conditions as in the opinion of the Commission provide reasonable protection for customers. Exemption on terms and conditions

(7) Notwithstanding subsection 1, where a registered dealer has a residual financial interest in a customer's account or has advanced his own funds to prevent any customer's account from becoming undermargined, the dealer may draw upon that account or any other accounts of the same customer to his own order to the extent of his residual financial interest therein or to the extent of the actual advances made. Exception

47. Every registered dealer shall deliver to the Commission, at such time or times as the Commission may require, reports as to transactions in contracts on its own account or on behalf of any other person or company in such form as the Commission may prescribe. Reports

48.—(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named in the order to, Order prohibiting calls to residences

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any contract.

Hearing

(2) The Director shall not make an order under subsection 1 without giving the person or company affected an opportunity to be heard.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on his or its behalf.

Representations prohibited

49.—(1) No person or company, with the intention of effecting a trade in a contract, shall make any representation that he or any other person or company,

(*a*) will refund all or any of the margin or premium; or

(*b*) assume all or any part of the obligation of another person or company under the contract.

Future value

(2) No person or company, with the intention of effecting a trade in a contract, shall give any undertaking, written or oral, relating to the future value of such contract.

Use of name of another registrant

50. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant.

Registration not to be advertised

51. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered.

Holding out by unregistered person

52. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered.

Advertising approval by Commission

53. No person or company shall make any representation, written or oral, that the Commission has in any way

passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any contract.

Submission of advertising

54.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that a registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature that the registered dealer proposes to use in connection with trading in contracts.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except terms and conditions of contracts and the written statement required under section 41, designed for use in a presentation to a customer or prospective customer, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order under subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made under subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so.

PART XIII

ENFORCEMENT

Offences, general

55.—(1) Every person or company that,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or

the regulations to the Commission, its representative, the Director or to any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, return, financial statement, or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) otherwise contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a company or a person other than an individual, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000, or to imprisonment for a term of not more than one year.

Consent of Minister

56. No proceedings under section 55 shall be instituted except with the consent or under the direction of the Minister.

Information containing more than one offence

57. An information in respect of any contravention of this Act may be for one or more offences and no information, summons, warrant, conviction or other proceeding in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Execution of warrant issued in another province

58.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof.

Order for compliance

59.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court designated by the Chief Justice of the High Court for an order,

(*a*) directing such person or company to comply with such decision or provision or restraining such person or company from violating such decision or provision; and

(*b*) directing the directors and senior officers of such person or company to cause such person or company to comply with or to cease violating any such decision or provision,

and, upon the application, the judge may make such order or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Limitation period

60.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission.

PART XIV

GENERAL PROVISIONS

Refunds

61. Where,

(*a*) an application for registration or renewal of registration is abandoned;

(*b*) an application for recognition of a commodity futures exchange is abandoned; or

(*c*) an application for acceptance of the form of contract is abandoned,

the Director may, upon the application of the person or company who made the application recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund.

Admissibility in evidence of certified statements

62. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date of the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof, or by the Director is, without proof of the

office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

Material available for inspection

63.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission.

Idem

(2) Notwithstanding subsection 1, the Commission may hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection.

Immunity of Commission and officers

64.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any direction, decision, order, ruling or other requirement made or given under this Act or the regulations.

Liability of Crown

R.S.O. 1970, c. 365

(3) Subsection 1 does not, by reason of subsections 2 and 3 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection 1 to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted.

Regulations

65. The Lieutenant Governor in Council may make regulations,

1. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

2. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category;

3. governing the furnishing of information to the public or to the Commission by a registrant in connection with contracts or trades therein;

4. designating any person or company or any class of persons or companies that shall not be required to obtain registration as an adviser;

5. designating any goods, article, service, right or interest, or class thereof, a commodity;

6. prescribing conditions for the conduct of the business of a commodity futures exchange;

7. prescribing conditions precedent to the recognition of self-regulatory bodies under section 15;

8. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;

9. prescribing the documents, certificates, reports, releases, statements, agreements and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

10. prescribing the practice and procedure of investigations under sections 7 and 9;

11. prescribing the forms for use under this Act and the regulations;

12. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company in respect of a contract;

13. prescribing the form and content of the written statement required by section 40;

14. prescribing the form and content of the written agreement referred to in subsection 2 of section 46;

15. respecting the practice and procedure for the segregation of customers' money, securities, property, proceeds and funds under section 46;

16. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company.

Commission's discretion to revoke or vary its decision

66. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations.

Commencement

67. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

68. The short title of this Act is *The Commodity Futures Act, 1978*.

An Act to regulate Trading
in Commodity Futures Contracts

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

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An Act to regulate Trading in Commodity Futures Contracts

The Hon. L. Grossman
Minister of Consumer and Commercial Relations



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An Act to regulate Trading in Commodity Futures Contracts

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to trading in contracts;

2. "clearing house" means an association or organization, whether incorporated or unincorporated, or part of a commodity futures exchange through which trades in contracts entered into on such exchange are cleared;

3. "Commission" means the Ontario Securities Commission;

4. "commodity" means, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations;

5. "commodity futures contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;

6. "commodity futures exchange" means an association or organization, whether incorporated or

unincorporated, operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction;

7. "commodity futures option" means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;

8. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

9. "contract" means any commodity futures contract and any commodity futures option;

10. "dealer" means a person or company that trades in contracts in the capacity of principal or agent;

11. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

12. "declaration date", where used in relation to a commodity futures option, means that date on which the option expires;

13. "Director" means the Director or any Deputy Director of the Commission;

14. "floor trader" means an individual who is employed by a dealer for the purpose of entering into contracts on the floor of a commodity futures exchange on behalf of such dealer;

15. "hedger" means a person or company who carries on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, becomes exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offsets that risk through trading in contracts for the commodity or related commodities whether or not any particular trade is effected for that purpose, but a person or company is a hedger only as to trades in contracts for such commodity or related commodities;

16. "liquidating trade" means effecting settlement of a commodity futures contract,

    (*a*) in relation to a long position, by assuming an offsetting short position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

    (*b*) in relation to a short position, by assuming an offsetting long position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;

17. "long position", where used in relation to a commodity futures contract, means to be under an obligation to take delivery;

18. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;

19. "misrepresentation" means an untrue statement of material fact or an omission to state a material fact;

20. "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;

21. "open commodity futures contract" means an outstanding obligation under a commodity futures contract for which settlement has not been effected by the tender and receipt of the commodity or of an instrument evidencing title or the right to such commodity or by a liquidating trade;

22. "open interest", where used in relation to commodity futures contracts, means the total outstanding long positions or the total outstanding short positions, for each delivery month and in

aggregate, in commodity futures contracts relating to a particular commodity entered into on a commodity futures exchange;

23. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

24. "premium", where used in relation to a commodity futures option, means the consideration for which the option is acquired;

25. "register" means register under this Act, and "registered" has a corresponding meaning;

26. "registrant" means a person or company registered or required to be registered under this Act;

27. "regulations" means the regulations made under this Act;

28. "salesman" means an individual who is employed by a dealer for the purpose of making trades in contracts on behalf of such dealer;

29. "Secretary" means the Secretary of the Commission or any individual designated by the Commission to act in the capacity of Secretary;

30. "security" means a security within the meaning of *The Securities Act*;

R.S.O. 1970, c. 426

31. "settlement price", where used in relation to a commodity futures contract, means the price which is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open commodity futures contracts;

32. "short position", where used in relation to a commodity futures contract, means to be under an obligation to make delivery;

33. "striking price", where used in relation to a commodity futures option, means the price at which the purchaser of the option has the right to assume a long or short position in relation to the commodity futures contract that is the subject of the option;

34. "trade" or "trading" includes,

(*a*) entering into contracts, whether as principal or agent;

(*b*) acting as a floor trader;

(*c*) any receipt by a registrant of an order to effect a transaction in a contract;

(*d*) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract; and

(*e*) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

PART I

COMMODITY FUTURES ADVISORY BOARD

Commodity Futures Advisory Board

2.—(1) There shall be a board of not more than five members to be known as The Commodity Futures Advisory Board, the members of which shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Commodity Futures Advisory Board shall meet at the call of the Commission.

Duties

(3) The Commodity Futures Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning,

(*a*) developments in the nature of contracts and manner of trading; and

(*b*) the influence of trading in contracts on the economy of Ontario.

Remuneration

(4) The members of The Commodity Futures Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board.

PART II

APPOINTMENT OF EXPERTS

Appointment of experts

3.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions to experts

(2) The Commission may submit any agreement, contract, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections 3 and 4 of section 7 apply *mutatis mutandis*.

Payment of experts

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine.

PART III

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

Notification of decision

4.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 23 or refusing to accept the form of a contract under section 36 and the Commission may, within thirty days of the decision, notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

Stay

(4) Notwithstanding that a person or company requests a hearing and review under subsection 2, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

5.—(1) Any person or company directly affected by a decision of the Commission, may appeal to the Supreme Court. Appeal

(2) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal. Stay

(3) The Secretary shall certify to the Registrar of the Supreme Court, Certification of documents

(*a*) the decision that has been reviewed by the Commission;

(*b*) the decision of the Commission, together with any statement of reasons therefor;

(*c*) the record of the proceedings before the Commission; and

(*d*) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Minister entitled to be heard

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. Powers of court on appeal

(6) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. Further decisions

6.—(1) The Secretary may, Secretary

(*a*) accept service of all notices or other documents on behalf of the Commission;

(*b*) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;

(*c*) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 5; and

(*d*) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

Certification by Secretary

(2) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution.

PART IV

INVESTIGATIONS

Investigation order

7.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

Investigation order

(2) The Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act or into any matter relating to trading in contracts, and in such order shall determine and prescribe the scope of the investigation.

Scope of investigation

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(*a*) the affairs of the person or company in respect of which the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person or company and any property, assets or things owned, acquired or alienated in whole or in part by such person or company or by any person or company acting on behalf of or as agent for such person or company; and

(*b*) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person or company and the relationship that may at any time exist or have existed between such person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

R.S.O. 1970, c. 151

Counsel

(5) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities, contracts or other property of the person or company whose affairs are being investigated.

Inspection of seized documents

(7) Where any documents, records, securities, contracts or other property are seized under subsection 6, such documents, records, securities, contracts or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by such person or company to the person appointed to make the investigation.

Accountants and experts

(8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

Report of investigation

(9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.

Report to Minister

8. Where, upon the report of an investigation made under section 7, it appears to the Commission that any person or company may have,

(*a*) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970, c. C-34

(*b*) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to contracts,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister.

Investigation by order of Minister

9. Notwithstanding section 7, the Minister may, by order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in contracts, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 7.

Evidence not to be disclosed

10. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 7 or 9.

11. Where an investigation has been made under section 7, the Commission may, and, where an investigation has been made under section 9, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. Report to Minister

12.—(1) The Commission may, Order to freeze property

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts; or

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b* or *c* to hold such funds or securities or direct the person or company referred to in clause *a*, *b* or *c* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 13 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a commodity futures exchange clearing house, stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction. R.S.C. 1970, cc. B-4, W-11, R.S.O. 1970, cc. 228, 89, 53

Application for directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification.

Revocation or amendment of direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions as it may impose revoking the direction or consenting to the release of any fund or security.

Appointment of receiver, etc.

13.—(1) The Commission may,

(*a*) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;

(*b*) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts;

(*c*) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company; or

(*d*) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for such person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

Appointment

(2) Upon an application under subsection 1, the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of any such person or company or of persons or companies any of whose property is in the possession or under the control of such person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

(3) Upon an *ex parte* application made by the Commission under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. *Ex parte* application

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto. Powers of receiver, etc.

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice. Enforcement of order

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. Rules of practice

PART V

AUDITS

14.—(1) Notwithstanding anything in sections 15, 16, 17 and 18, the Commission may in writing appoint any person to examine at any time the financial affairs of a registrant or a clearing house of a commodity futures exchange in Ontario and prepare such financial or other statements and reports that may be required by the Commission. Audits by Commission

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the registrant or clearing house whose financial affairs are being examined, and no registrant or clearing house shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination. Access to records

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. Fees

PART VI

SELF REGULATION—GENERALLY

Self-regulatory bodies

15.—(1) The Commission may recognize in writing an association or organization representing registrants, whether incorporated or unincorporated, as a self-regulatory body where it is satisfied that to do so would be in the public interest and that the association or organization has satisfied or can satisfy all conditions with respect to self-regulatory bodies prescribed under the regulations.

Idem

(2) A self-regulatory body recognized under subsection 1 shall, subject to this Act and the regulations and any decision made by the Commission, regulate the standards and business conduct of its members.

Commission's powers

(3) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to any by-law, rule or regulation or proposed by-law, rule or regulation of a self-regulatory body recognized under subsection 1;

(*b*) with respect to any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1; or

(*c*) with respect to any practice of a self-regulatory body recognized under subsection 1.

Review of decisions of self-regulatory body

(4) Any person or company directly affected by any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1 may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Panel of auditors

16. Every commodity futures exchange in Ontario granted registration by the Commission under section 19 and every self-regulatory body recognized by the Commission under section 15 shall,

(*a*) select a panel of auditors, each of whom shall have practised as such in Canada for not fewer than five years and shall be known as a panel auditor or members' auditor; and

(*b*) employ an exchange auditor, association or organization auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Canada for not fewer than ten years.

Audits by commodity futures exchange and self-regulatory bodies

17.—(1) Every commodity futures exchange in Ontario granted registration by the Commission and every self-regulatory body recognized by the Commission shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 16 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, association or organization auditor, as the case may be.

Audit by-laws subject to approval

(2) The by-laws, rules and regulations of every commodity futures exchange in Ontario granted registration by the Commission and the by-laws, rules and regulations of every self-regulatory body recognized by the Commission in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission.

Filing of financial statements of registrants

18. Every registrant whose financial affairs are not subject to examination under section 17 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by such registrant or an officer or partner of such registrant and reported upon by the auditor of such registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe.

PART VII

COMMODITY FUTURES EXCHANGES IN ONTARIO

Commodity futures exchanges in Ontario

19.—(1) No person or company shall carry on business as a commodity futures exchange in Ontario unless such commodity futures exchange is registered as a commodity futures exchange.

Registration

(2) Upon application by or on behalf of a person or company wishing to carry on business in Ontario as a commodity futures exchange, the Commission shall grant registration to that person or company for the purposes of subsection 1 where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest; and

(*f*) the commodity futures exchange has satisfied or can satisfy all conditions prescribed under the regulations for the conduct of the business of a commodity futures exchange.

Hearing

(3) The Commission shall not refuse to grant registration to a commodity futures exchange for the purposes of subsection 1 without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

20.—(1) Every commodity futures exchange in Ontario and its clearing house shall file with the Commission all by-laws, rules, regulations and policies as soon as practicable and in any event within five days of the date on which the by-law, rule, regulation or policy is approved by the board of directors of the commodity futures exchange or its clearing house and prior to approval by the membership of the commodity futures exchange or clearing house.

Commission's powers

(2) The Commission may, where it appears to it to be in the public interest, make any decision,

(*a*) with respect to the manner in which any commodity futures exchange in Ontario or its clearing house carries on business;

(*b*) with respect to any by-law, rule or regulation of any such commodity futures exchange or its clearing house; or

(*c*) with respect to trading on or through the facilities of any such commodity futures exchange or with respect to any contract traded on any such commodity futures exchange including the setting of levels of margin, daily price limits, daily trading limits and position limits.

Review of decision of commodity futures exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a commodity futures exchange in Ontario or its clearing house may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

Records and reports

21. Every commodity futures exchange and its clearing house in Ontario shall keep such records as are necessary for the proper recording of each transaction on such exchange and shall,

(*a*) supply to any customer of any member of such commodity futures exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation; and

(*b*) deliver to the Commission at such time or times as the Commission may require reports as to transactions on such exchange in such form as the Commission may prescribe.

PART VIII

REGISTRATION FOR TRADING, ACTING AS ADVISER

Registration for trading

22.—(1) No person or company shall,

(*a*) trade in a contract unless such person or company is registered as a dealer or is registered as a sales-

man or floor trader or as a partner or as an officer of a registered dealer and is acting on behalf of such dealer;

(*b*) act as an adviser unless such person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of such adviser,

and such registration has been made in accordance with this Act and the regulations and such person or company has received written notice of such registration from the Director and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

Termination re salesman and floor trader

(2) The termination of the employment of a salesman or floor trader with a registered dealer shall operate as a suspension of the registration of the salesman or floor trader until notice in writing has been received by the Director from another registered dealer of the employment of the salesman or floor trader by such other registered dealer and the reinstatement of the registration has been approved by the Director.

Non-trading employee

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually trade in contracts, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman.

Granting of registration

23.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant except where,

(*a*) having regard to the applicant's financial position, he cannot reasonably be expected to be financially responsible in the conduct of his business;

(*b*) the past conduct of the applicant, or the officers, directors or partners of the applicant, affords reasonable grounds for belief that his business will not be carried on in accordance with law and with integrity and honesty; or

(*c*) the applicant is or will be carrying on activities that are in contravention of this Act or the regulations.

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in a certain class of contracts. Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. Refusal

24.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 4. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. Surrender

25. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. Subsequent applications

26. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. Application

27. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. Address for service

Further information

28. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director.

Residence

29.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of the application for registration or if he is not a resident of Ontario at the date of such application unless at the time of such application such individual is registered in a capacity corresponding to that of a dealer, adviser, partner, officer, salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of such person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration or is not a resident of Ontario at the date of such application unless at the time of such application he is registered in a capacity corresponding to that of dealer, adviser, partner, officer or salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Notice of changes

30.—(1) Every registered dealer shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address;

(*b*) any change in,

(i) the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered dealer;

(*c*) the commencement and termination of employment of every registered salesman and floor trader and in the case of termination of employment, the reason therefor;

(*d*) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and

(*e*) any change in the name or address of the person in charge of any branch office in Ontario.

Idem

(2) Every registered adviser, shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in address for service in Ontario or any business address; and

(*b*) any change in,

(i) the directors or officers of the registered adviser and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered adviser.

Idem

(3) Every registered salesman and floor trader shall, within five business days of the event, notify the Director in the form prescribed by the regulations of,

(*a*) any change in his address for service in Ontario or in his business address; and

(*b*) every commencement and termination of his employment by a registered dealer.

Exemptions

(4) The Director may, upon an application of a registrant, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so.

PART IX

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions of advisers

31. Registration as an adviser is not required to be obtained by,

R.S.C. 1970, c. B-1
1974-75, c. 14 (Can.)
R.S.O. 1970, cc. 254, 224

(*a*) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;

(*b*) a lawyer, accountant, engineer, teacher or employee of the Ministry of Agriculture and Food;

(*c*) a registered dealer, or any partner, officer or employee thereof;

R.S.O. 1970, c. 426

(*d*) a person or company registered as an adviser under *The Securities Act*, or any partner, officer or employee thereof;

(*e*) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the contracts upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(*f*) such other persons or companies as are designated by the regulations.

Exemption of trades

32.—(1) Subject to the regulations, registration is not required in respect of,

(*a*) a trade in a contract by a hedger through a dealer;

(*b*) a trade in a contract by a person or company acting solely through an agent who is a registered dealer;

(*c*) a trade in a contract to be executed on an exchange situate outside Ontario resulting from an order placed with a dealer who does not carry on business in Ontario, not involving any solicitation by or on behalf of the dealer; or

(*d*) a trade in a contract in respect of which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*. R.S.O. 1970, c. 426

PART X

RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Registration or recognition of commodity futures exchange and acceptance of form of contracts required

33. No person or company, except a hedger, shall trade in contracts on his own account or on behalf of any other person or company except,

(*a*) contracts traded on a commodity futures exchange, registered by the Commission or recognized by the Commission under this Part, if the form of the contracts has been approved by the Director under this Part;

(*b*) contracts for which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act*; and

(*c*) a contract traded on a commodity futures exchange situate outside Ontario as the result of an order placed with a dealer who does not carry on business in Ontario, not involving any solicitation by or on behalf of the dealer.

Recognition of commodity futures exchange by Commission

34.—(1) Upon application by or on behalf of a commodity futures exchange that is situate outside Ontario, the Commission shall recognize such commodity futures exchange where it is satisfied that to do so would not be prejudicial to the public interest and in making its decision shall take into account whether,

(*a*) the clearing and other arrangements made and the financial condition of the commodity futures exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of contracts entered into on such commodity futures exchange will be met;

(*b*) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;

(*c*) floor trading practices are fair and properly supervised;

(*d*) adequate measures have been taken to prevent manipulation and excessive speculation;

(*e*) adequate provision has been made to record and publish details of trading including volume and open interest;

(*f*) the exchange and its clearing house have undertaken to comply with section 35; and

(*g*) the exchange and its clearing house are subject to appropriate government controls.

Hearing

(2) The Commission shall not refuse to recognize a commodity futures exchange under this Part without giving the applicant an opportunity to be heard.

Filing of by-laws, etc.

35. Every commodity futures exchange recognized by the Commission under section 34 and its clearing house shall file with the Commission all by-laws, rules, regulations and policies forthwith after the by-law, rule, regulation or policy is approved by the Board of Directors of the commodity futures exchange or clearing house.

Acceptance of form of contracts by Director

36.—(1) Upon application by or on behalf of a commodity futures exchange registered by the Commission, or recognized by the Commission under this Part, and the filing of a copy of all terms and conditions of a contract that it is proposed be traded in Ontario, the Director shall accept the form of contract where he is satisfied that to do so would not be prejudicial to the public interest and in making his decision shall take into account whether,

(*a*) more than occasional use is made or can be reasonably expected to be made of the contract for hedging transactions;

(*b*) with respect to a commodity futures contract each term or condition is in conformity with normal

commercial practices of the trade in the commodity or if not in such conformity there is reasonable justification therefor;

(*c*) with respect to a commodity futures contract satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;

(*d*) with respect to a commodity futures option the form of the commodity futures contract that is the subject of the option has been accepted under this Part; and

(*e*) with respect to a commodity futures option performance on exercise of the option is reasonably assured by established rules and procedures that are actively enforced.

Hearing

(2) The Director shall not refuse to accept the form of contract without giving the applicant an opportunity to be heard.

Terms and conditions of contracts to be filed with Commission and available through agent

37.—(1) It is a condition of acceptance of the form of a contract under section 36 that the commodity futures exchange,

(*a*) file with the Commission copies of all current contract terms and conditions; and

(*b*) unless the Director by order modifies the requirement, make copies of all current contract terms and conditions available to registrants through an agent in Ontario designated by the commodity futures exchange.

Idem

(2) Copies of amendments or additions to contract terms and conditions shall be filed with the Commission and supplied to the agent designated by the commodity futures exchange forthwith after the amendment or addition is approved by the Board of Directors of the commodity futures exchange.

Idem

(3) The Director shall not accept the form of a contract until advised by the commodity futures exchange of the name and address of the agent designated for the purposes of subsection 1.

Idem

(4) The commodity futures exchange shall, within five days of the event, notify the Director of any change in the name or address of the agent designated for the purposes of subsection 1.

Order exempting from registration for trading, acceptance of form of contract

38.—(1) The Commission may upon the application of an interested person or company, rule that an intended trade is not subject to section 22 or 33 where it is satisfied that to do so will not be prejudicial to the public interest and may impose such terms and conditions as are considered necessary.

Ruling final

(2) A decision of the Commission under this section is final and there is no appeal therefrom.

PART XI

REVOCATION OF REGISTRATION OR RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Order revoking registration or recognition of commodity futures exchange or acceptance of form of contract

39.—(1) The Commission may, where in its opinion such action is in the public interest, and, subject to such terms and conditions as it may impose, by order revoke registration of a commodity futures exchange under Part VII or recognition of a commodity futures exchange under Part X or revoke acceptance of the form of a contract under Part X for such period as is specified in the order.

Temporary order

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, that shall not be for longer than fifteen days from the date of the making thereof, but such order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period.

PART XII

TRADING GENERALLY

Statement to be furnished to prospective customer

40.—(1) Every registered dealer or adviser shall furnish each prospective customer prior to the opening of his account with a written statement in the form prescribed under the regulations which will,

(*a*) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the customer upon entering a contract;

(*b*) advise the client to request and study the terms and conditions of the contract; and

(*c*) furnish details concerning commissions and other charges levied by the dealer or adviser.

Terms and conditions

(2) Except where the Director by order modifies the requirement, every registered dealer or adviser upon the request of a client shall furnish the client with a copy of all current terms and conditions of any contract the form of which has been accepted by the Director under Part X.

Minimum margin required

41.—(1) Subject to subsections 2 and 3, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed under the by-laws, rules or regulations of the commodity futures exchange upon which the contract is traded.

Idem

(2) Subject to subsection 3, where the Commission has made an order with respect to levels of margin under section 20, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed thereunder.

Margin greater than minimum

(3) Notwithstanding subsections 1 and 2, a registered dealer may require from the customer a margin greater than that prescribed under subsection 2 or 3.

Confirmation of trade re commodity futures contract

42.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures contract, including a trade upon the exercise of a commodity futures option, shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(*a*) the date of the transaction;

(*b*) the commodity and quantity bought or sold;

(*c*) the commodity futures exchange upon which the contract was traded;

(*d*) the delivery month and year;

(*e*) the price at which the contract was entered into;

(*f*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade; and

(*g*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *f* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure of clients

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures contract shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the commodity was bought or sold.

Statement of purchase and sale

43. Every registered dealer who has acted as an agent in connection with a liquidating trade in a commodity futures contract shall promptly send by prepaid mail or deliver to the customer in addition to the written confirmation required under section 42, a statement of purchase and sale setting forth,

(*a*) the dates of the initial transaction and liquidating trade;

(*b*) the commodity and quantity bought and sold;

(*c*) the commodity futures exchange upon which the contracts were traded;

(*d*) the delivery month and year;

(*e*) the prices on the initial transaction and on the liquidating trade;

(*f*) the gross profit or loss on the transactions;

(*g*) the commission; and

(*h*) the net profit or loss on the transactions.

Monthly statement

44. So long as any unexpired and unexercised commodity futures option or open commodity futures contract is outstanding in a customer's account, every registered dealer shall promptly send by prepaid mail or deliver to each customer a written statement prepared as of the last business day of each month, setting forth,

(*a*) the opening cash balance for the month in the customer's account;

(*b*) all deposits, credits, withdrawals and debits to the customer's account;

(*c*) the cash balance in the customer's account as of the last business day of the month;

(*d*) each unexpired and unexercised commodity futures option as of the last business day of the month;

(*e*) the striking price of each unexpired and unexercised commodity futures option;

(*f*) the settlement price as of the last business day of the month of the commodity futures contract that is the subject of each unexpired and unexercised commodity futures option;

(*g*) each open commodity futures contract as of the last business day of the month;

(*h*) the price at which each open commodity futures contract was entered into;

(*i*) the settlement price as of the last business day of the month of each open commodity futures contract;

(*j*) the amount that the equity in the account has increased or decreased as a result of the difference between the sums called for under clauses *h* and *i*; and

(*k*) the total of the sums called for under clauses *c* and *j*.

Confirmation of trade re commodity futures option

45.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures option shall promptly send by prepaid mail or

(*g*) the declaration date;

(*h*) the striking price;

(*i*) the name of the dealer, if any, used by the registered dealer as its agent to effect the trade;

(*j*) the commission, if any, charged in respect of the trade; and

(*k*) the name of the salesman, if any, in the transaction.

Coded identification

(2) For the purposes of clauses *i* and *k* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

Disclosure by agent

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures option shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or through whom the commodity futures option was obtained.

Segregation of funds

46.—(1) All money, securities, property and proceeds of loans received or advanced by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers, shall be segregated for the benefit of the customers for whom they are held, and the registered dealer shall separately account for all such money, securities, property, proceeds and funds so received or advanced by him, and shall not knowingly commingle such money, securities, property, proceeds and funds with his own money, securities, property and funds.

Application

(2) Subsection 1 does not apply to securities or property that are subject to a lien or charge in favour of the registered dealer under a written agreement, in the form prescribed by the regulations, to secure loans referred to in subsection 1.

(3) Money, securities, property, proceeds and funds segregated under subsection 1 for the benefit of customers may be commingled. Commingling of segregated funds

(4) No registered dealer shall knowingly use money, securities, property, proceeds or funds received from, advanced to or held for any customer to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any customer other than the customer for whom such money, securities, property, proceeds or funds are held. Registered dealer not to use funds

(5) Notwithstanding subsection 1, a registered dealer may have a residual financial interest in a customer's account and, from time to time, may advance from his own funds sufficient funds to prevent any and all customer's accounts from becoming undermargined. Residual financial interest

(6) Upon application by an interested person or company, the Commission may exempt any registered dealer or class of registered dealers from subsection 1 or 4, on such terms and conditions as in the opinion of the Commission provide reasonable protection for customers. Exemption on terms and conditions

(7) Notwithstanding subsection 1, where a registered dealer has a residual financial interest in a customer's account or has advanced his own funds to prevent any customer's account from becoming undermargined, the dealer may draw upon that account or any other accounts of the same customer to his own order to the extent of his residual financial interest therein or to the extent of the actual advances made. Exception

47. Every registered dealer shall deliver to the Commission, at such time or times as the Commission may require, reports as to transactions in contracts on its own account or on behalf of any other person or company in such form as the Commission may prescribe. Reports

48.—(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named in the order to, Order prohibiting calls to residences

(*a*) call at any residence; or

(*b*) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any contract.

Hearing

(2) The Director shall not make an order under subsection 1 without giving the person or company affected an opportunity to be heard.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on his or its behalf.

Representations prohibited

49.—(1) No person or company, with the intention of effecting a trade in a contract, shall make any representation that he or any other person or company,

(*a*) will refund all or any of the margin or premium; or

(*b*) assume all or any part of the obligation of another person or company under the contract.

Future value

(2) No person or company, with the intention of effecting a trade in a contract, shall give any undertaking, written or oral, relating to the future value of such contract.

Use of name of another registrant

50. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant.

Registration not to be advertised

51. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered.

Holding out by unregistered person

52. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered.

Advertising approval by Commission

53. No person or company shall make any representation, written or oral, that the Commission has in any way

passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any contract.

Submission of advertising

54.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that a registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature that the registered dealer proposes to use in connection with trading in contracts.

Interpretation

(2) For the purposes of this section,

(*a*) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(*b*) "sales literature" includes records, videotapes and similar material, written matter and all other material, except terms and conditions of contracts and the written statement required under section 41, designed for use in a presentation to a customer or prospective customer, whether such material is given or shown to him.

Prohibition of advertising

(3) Where the Commission has issued an order under subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission or variation of order

(4) Where an order has been made under subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so.

PART XIII

ENFORCEMENT

Offences, general

55.—(1) Every person or company that,

(*a*) makes a statement in any material, evidence or information submitted or given under this Act or

the regulations to the Commission, its representative, the Director or to any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*b*) makes a statement in any application, release, report, return, financial statement, or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(*c*) otherwise contravenes this Act or the regulations; or

(*d*) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a company or a person other than an individual, to a fine of not more than $25,000 and, in the case of an individual, to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than $2,000, or to imprisonment for a term of not more than one year.

Consent of Minister

56. No proceedings under section 55 shall be instituted except with the consent or under the direction of the Minister.

Information containing more than one offence

57. An information in respect of any contravention of this Act may be for one or more offences and no information, summons, warrant, conviction or other proceeding in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Execution of warrant issued in another province

58.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

Prisoner in transit

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof.

Order for compliance

59.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court designated by the Chief Justice of the High Court for an order,

(*a*) directing such person or company to comply with such decision or provision or restraining such person or company from violating such decision or provision; and

(*b*) directing the directors and senior officers of such person or company to cause such person or company to comply with or to cease violating any such decision or provision,

and, upon the application, the judge may make such order or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Limitation period

60.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission.

PART XIV

GENERAL PROVISIONS

Refunds

61. Where,

(*a*) an application for registration or renewal of registration is abandoned;

(*b*) an application for recognition of a commodity futures exchange is abandoned; or

(*c*) an application for acceptance of the form of contract is abandoned,

the Director may, upon the application of the person or company who made the application recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund.

Admissibility in evidence of certified statements

62. A statement as to,

(*a*) the registration or non-registration of any person or company;

(*b*) the filing or non-filing of any document or material required or permitted to be filed;

(*c*) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(*d*) the date of the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof, or by the Director is, without proof of the

office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

Material available for inspection

63.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission.

Idem

(2) Notwithstanding subsection 1, the Commission may hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection.

Immunity of Commission and officers

64.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any direction, decision, order, ruling or other requirement made or given under this Act or the regulations.

Liability of Crown

R.S.O. 1970, c. 365

(3) Subsection 1 does not, by reason of subsections 2 and 3 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection 1 to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted.

Regulations

65. The Lieutenant Governor in Council may make regulations,

1. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

2. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category;

3. governing the furnishing of information to the public or to the Commission by a registrant in connection with contracts or trades therein;

4. designating any person or company or any class of persons or companies that shall not be required to obtain registration as an adviser;

5. designating any goods, article, service, right or interest, or class thereof, a commodity;

6. prescribing conditions for the conduct of the business of a commodity futures exchange;

7. prescribing conditions precedent to the recognition of self-regulatory bodies under section 15;

8. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;

9. prescribing the documents, certificates, reports, releases, statements, agreements and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

10. prescribing the practice and procedure of investigations under sections 7 and 9;

11. prescribing the forms for use under this Act and the regulations;

12. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company in respect of a contract;

13. prescribing the form and content of the written statement required by section 40;

14. prescribing the form and content of the written agreement referred to in subsection 2 of section 46;

15. respecting the practice and procedure for the segregation of customers' money, securities, property, proceeds and funds under section 46;

16. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company.

Commission's discretion to revoke or vary its decision

66. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations.

Commencement

67. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

68. The short title of this Act is *The Commodity Futures Act, 1978*.

An Act to regulate Trading
in Commodity Futures Contracts

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

June 23rd, 1978

The Hon. L. Grossman
Minister of Consumer and
Commercial Relations

1978

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BILL 9

Government Publications

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Business Corporations Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

This Bill is complementary to a Bill to enact *The Securities Act, 1978*.

The provisions respecting insider trading and reporting are contained in *The Securities Act, 1978* and deleted from *The Business Corporations Act*. Similarly the provisions for the contents of financial statements for corporations that are offering their securities to the public are deleted and provided for in *The Securities Act, 1978*. Other changes are for the purpose of co-ordinating *The Business Corporations Act* with the new *Securities Act, 1978*.

BILL 9 **1978**

An Act to amend The Business Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 3 of subsection 1 of section 1 of *The Business Corporations Act*, being chapter 53 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 1 (1), par. 3, re-enacted

3. "associate", where used to indicate a relationship with any person, means,

i. any body corporate of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,

ii. any partners of that person,

iii. any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, or

iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person.

(2) Paragraph 13 of subsection 1 of the said section 1 is repealed. s. 1 (1), par. 13, repealed

(3) Paragraph 15 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1), par. 15, re-enacted

15. "individual" means a natural person, but does not include a partnership, unincorporated association,

unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, admininstrator or other legal personal representative.

s. 1 (1), par. 19, re-enacted

(4) Paragraph 19 of subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor:

19. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a corporation, and any other person designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office.

s. 1 (1), par. 25, re-enacted

(5) Paragraph 25 of subsection 1 of the said section 1 is repealed and the following substituted therefor:

25. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i.

s. 1 (1), amended

(6) Subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1971, chapter 26, section 1, 1972, chapter 1, section 30, 1972, chapter 138, section 1 and 1974, chapter 26, section 1, is further amended by adding thereto the following paragraph:

27*a*. "voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

s. 1 (6), repealed

(7) Subsection 6 of the said section 1 is repealed.

(8) Clause *b* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor: s. 1 (9) (*b*), re-enacted

(*b*) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

. . . . .

2. Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 14, is repealed. s. 41, repealed

3. Clause *b* of subsection 2 of section 118 of the said Act is repealed and the following substituted therefor: s. 118 (2) (*b*), re-enacted

(*b*) any solicitation by a person made under section 48 of *The Securities Act, 1978*; and 1978, c. ...

. . . . .

4. Section 148, as amended by the Statutes of Ontario, 1971, chapter 26, section 23, and sections 149, 150, 151 and 152 of the said Act are repealed. ss. 148-152, repealed

5.—(1) Clause *a* of subsection 1 of section 172 of the said Act is amended by inserting after "incorporation" in the third line "reorganization or continuation, as the case may be" and by striking out "completed" in the seventh line. s. 172 (1) (*a*), amended

(2) Clause *b* of subsection 1 of the said section 172 is repealed and the following substituted therefor: s. 172 (1) (*b*), re-enacted

(*b*) in the case of a corporation that is offering its securities to the public, the financial statement required to be filed under *The Securities Act, 1978* and the regulations thereunder relating separately to,

(i) the period that commenced on the date of incorporation, reorganization or continuation, as the case may be, and ended as of the close of the first financial year or, if the corporation has completed a financial year, the last financial year, as the case may be, and

(ii) the period covered by the financial year next preceding the last financial year, if any.

s. 172 (2), re-enacted

(3) Subsection 2 of the said section 172 is repealed and the following substituted therefor:

Designation of statements

(2) It is not necessary to designate the statements referred to in clause *a* of subsection 1 as the statement of profit and loss, statement of surplus and balance sheet.

s. 173 (1) (*a*, *k*, *l*), repealed

6.—(1) Clause *a*, and clauses *k* and *l* as enacted by the Statutes of Ontario, 1971, chapter 26, section 26 and amended by 1972, chapter 138, section 50, of subsection 1 of section 173 of the said Act are repealed.

s. 173 (2), amended

(2) Subsection 2 of the said section 173, as amended by the Statutes of Ontario, 1972, chapter 138, section 50, is further amended by striking out "*h*, *k* and *l*" in the amendment of 1972 and inserting in lieu thereof "and *h*".

s. 173 (3, 4), repealed

(3) Subsections 3 and 4 of the said section 173 are repealed.

ss. 175, 176, repealed

7. Sections 175 and 176 of the said Act are repealed.

s. 178 (3), pars. 16, 18-21 repealed

8.—(1) Paragraph 16, and paragraphs 18 to 21 as enacted by the Statutes of Ontario, 1971, chapter 26, section 28, of subsection 3 of section 178 of the said Act are repealed.

s. 178 (4), repealed

(2) Subsection 4 of the said section 178, as enacted by the Statutes of Ontario, 1972, chapter 138, section 51, is repealed.

s. 179 (1), amended

9.—(1) Subsection 1 of section 179 of the said Act is amended by inserting after "corporation" in the second line "to which clause *a* of subsection 1 of section 172 applies".

s. 179 (3), amended

(2) Subsection 3 of the said section 179 is amended by inserting after "corporation" in the second line "to which either clause *a* or *b* of subsection 1 of section 172 applies".

s. 185, re-enacted

10. Section 185 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 30, is repealed and the following substituted therefor:

Interim financial statements

1978, c. ...

185.—(1) A corporation that is offering its securities to the public shall send to each shareholder a copy of an interim financial statement required to be filed under *The Securities Act, 1978* and the regulations thereunder.

Distribution to shareholders

(2) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation.

11. Subsection 2 of section 251 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 67, section 1, is amended by striking out "section 134 of *The Securities Act*" in the second and third lines and in the sixth and seventh lines and inserting in lieu thereof in each instance "sections 76 and 77 of *The Securities Act, 1978*". s. 251 (2), amended

12.—(1) Subsection 2 of section 260 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 43, is repealed. s. 260 (2), repealed

(2) Subsection 3 of the said section 260 is amended by striking out "subsections 1 and 2" in the first line and inserting in lieu thereof "subsection 1". s. 260 (3), amended

13. Subsection 2 of section 261 of the said Act is repealed and the following substituted therefor: s. 261 (2), re-enacted

(2) Where it appears to the Commission that any person or corporation to which section 117 or subsection 1 of section 118 applies has failed to comply with or is contravening any such provision, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention and in addition to any other rights it may have, apply to the court for an order, Idem

(*a*) directing such person or corporation to comply with such provision or restraining such person or corporation from contravening such provision; and

(*b*) directing the directors and senior officers of such person or corporation to cause such person or corporation to comply with or to cease contravening any such provision,

and upon such application, the court may make such order or such other order as the court thinks fit.

14. Section 269 of the said Act is repealed and the following substituted therefor: s. 269, re-enacted

269. Any person or corporation directly affected by a decision of the Commission under this Act may appeal to the Supreme Court and subsections 2 to 6 of section 9 of *The Securities Act, 1978* apply to the appeal. Appeal from Commission 1978, c. ...

15. Clause *e* of section 271 of the said Act is repealed. s. 271 (*e*), repealed

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

17. The short title of this Act is *The Business Corporations Amendment Act, 1978*. Short title

An Act to amend
The Business Corporations Act

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

(*Government Bill*)

1978

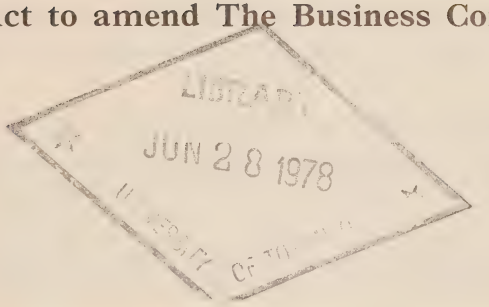
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BILL 9 **Government Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Business Corporations Act



THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

(Reprinted as amended by the Administration of Justice Committee)

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

This Bill is complementary to a Bill to enact *The Securities Act, 1978*.

The provisions respecting insider trading and reporting are contained in *The Securities Act, 1978* and deleted from *The Business Corporations Act*. Similarly the provisions for the contents of financial statements for corporations that are offering their securities to the public are deleted and provided for in *The Securities Act, 1978*. Other changes are for the purpose of co-ordinating *The Business Corporations Act* with the new *Securities Act, 1978*.

BILL 9 **1978**

An Act to amend The Business Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 3 of subsection 1 of section 1 of *The Business Corporations Act*, being chapter 53 of the Revised Statutes of Ontario, 1970, is repealed. s. 1 (1), par. 3, repealed

(2) Paragraph 15 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1), par. 15, re-enacted

15. "individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, admininstrator or other legal personal representative.

(3) Paragraph 19 of subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor: s. 1 (1), par. 19, re-enacted

19. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a corporation, and any other person designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office.

(4) Paragraph 25 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1), par. 25, re-enacted

25. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i.

s. 1 (6), repealed

(5) Subsection 6 of the said section 1 is repealed.

s. 1 (9) (*a*), amended

(6) Clause *a* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is amended by inserting after "*Act*" in the fourth line "*1978*".

s. 1 (9) (*b*), re-enacted

(7) Clause *b* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor:

(*b*) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

. . . . .

s. 41, repealed

2. Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 14, is repealed.

s. 57 (2), amended

3. Subsection 2 of section 57 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 16, is amended by inserting after "*Act*" in the seventh line "*1978*".

s. 63 (1) (*d*), amended

4. Clause *d* of subsection 1 of section 63 of the said Act is amended by inserting after "*Act*" in the fourth line "*1978*".

s. 118 (2) (*b*), re-enacted

5. Clause *b* of subsection 2 of section 118 of the said Act is repealed and the following substituted therefor:

1978, c. ...

(*b*) any solicitation by a person made under section 48 of *The Securities Act, 1978*; and

. . . . .

6. Section 148, as amended by the Statutes of Ontario, 1971, chapter 26, section 23, and sections 149, 150, 151 and 152 of the said Act are repealed. ss. 148-152, repealed

7.—(1) Clause *b* of subsection 1 of section 172 of the said Act is repealed and the following substituted therefor: s. 172 (1) (*b*), re-enacted

(*b*) in the case of a corporation that is offering its securities to the public, the financial statement required to be filed under *The Securities Act, 1978* 1978, c. ... and the regulations thereunder relating separately to,

(i) the period that commenced on the date of incorporation and ended as of the close of the first financial year or, if the corporation has completed a financial year, the last financial year, as the case may be, and

(ii) the period covered by the financial year next preceding the last financial year, if any.

(2) Subsection 2 of the said section 172 is repealed and the following substituted therefor: s. 172 (2), re-enacted

(2) It is not necessary to designate the statements referred to in clause *a* of subsection 1 as the statement of profit and loss, statement of surplus and balance sheet. Designation of statements

8.—(1) Clause *a*, and clauses *k* and *l* as enacted by the Statutes of Ontario, 1971, chapter 26, section 26 and amended by 1972, chapter 138, section 50, of subsection 1 of section 173 of the said Act are repealed. s. 173 (1) (*a*, *k*, *l*), repealed

(2) Subsection 2 of the said section 173, as amended by the Statutes of Ontario, 1972, chapter 138, section 50, is further amended by striking out "*h*, *k* and *l*" in the amendment of 1972 and inserting in lieu thereof "and *h*". s. 173 (2), amended

(3) Subsections 3 and 4 of the said section 173 are repealed. s. 173 (3, 4), repealed

9. Sections 175 and 176 of the said Act are repealed. ss. 175, 176, repealed

10.—(1) Paragraph 16, and paragraphs 18 to 21 as enacted by the Statutes of Ontario, 1971, chapter 26, section 28, of subsection 3 of section 178 of the said Act are repealed. s. 178 (3), pars. 16, 18-21 repealed

(2) Subsection 4 of the said section 178, as enacted by the Statutes of Ontario, 1972, chapter 138, section 51, is repealed. s. 178 (4), repealed

s. 179 (1), amended

11.—(1) Subsection 1 of section 179 of the said Act is amended by inserting after "corporation" in the second line "to which clause *a* of subsection 1 of section 172 applies".

s. 179 (3), amended

(2) Subsection 3 of the said section 179 is amended by inserting after "corporation" in the second line "to which either clause *a* or *b* of subsection 1 of section 172 applies".

s. 185, re-enacted

12. Section 185 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 30, is repealed and the following substituted therefor:

Interim financial statements 1978, c. ...

185.—(1) A corporation that is offering its securities to the public shall send to each shareholder a copy of an interim financial statement required to be filed under *The Securities Act, 1978* and the regulations thereunder.

Distribution to shareholders

(2) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation.

s. 251 (2), amended

13. Subsection 2 of section 251 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 67, section 1, is amended by striking out "section 134 of *The Securities Act*" in the second and third lines and in the sixth and seventh lines and inserting in lieu thereof in each instance "sections 76 and 77 of *The Securities Act, 1978*".

s. 260 (2), repealed

14.—(1) Subsection 2 of section 260 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 43, is repealed.

s. 260 (3), amended

(2) Subsection 3 of the said section 260 is amended by striking out "subsections 1 and 2" in the first line and inserting in lieu thereof "subsection 1".

s. 261 (2), re-enacted

15. Subsection 2 of section 261 of the said Act is repealed and the following substituted therefor:

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117 or subsection 1 of section 118 applies has failed to comply with or is contravening any such provision, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention and in addition to any other rights it may have, apply to the court for an order,

(*a*) directing such person or corporation to comply with such provision or restraining such person or corporation from contravening such provision; and

(*b*) directing the directors and senior officers of such person or corporation to cause such person or corporation to comply with or to cease contravening any such provision,

and upon such application, the court may make such order or such other order as the court thinks fit.

16. Section 269 of the said Act is repealed and the following substituted therefor: s. 269, re-enacted

269. Any person or corporation directly affected by a decision of the Commission under this Act may appeal to the Supreme Court and subsections 2 to 6 of section 9 of *The Securities Act, 1978* apply to the appeal. Appeal from Commission 1978, c. ...

17. Clause *e* of section 271 of the said Act is repealed. s. 271 (*e*), repealed

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

19. The short title of this Act is *The Business Corporations Amendment Act, 1978*. Short title

BILL 9

An Act to amend
The Business Corporations Act

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

(Reprinted as amended by the Administration of Justice Committee)

Government Publications

BILL 9

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Business Corporations Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

JUL 7 1978

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 9 **1978**

An Act to amend The Business Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 3 of subsection 1 of section 1 of *The Business Corporations Act*, being chapter 53 of the Revised Statutes of Ontario, 1970, is repealed. s. 1 (1), par. 3, repealed

(2) Paragraph 15 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1), par. 15, re-enacted

15. "individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, admininstrator or other legal personal representative.

(3) Paragraph 19 of subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor: s. 1 (1), par. 19, re-enacted

19. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a corporation, and any other person designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office.

(4) Paragraph 25 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1), par. 25, re-enacted

25. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i.

s. 1 (6), repealed

(5) Subsection 6 of the said section 1 is repealed.

s. 1 (9) (*a*), amended

(6) Clause *a* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is amended by inserting after "*Act*" in the fourth line "*1978*".

s. 1 (9) (*b*), re-enacted

(7) Clause *b* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor:

(*b*) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

. . . . .

s. 41, repealed

2. Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 14, is repealed.

s. 57 (2), amended

3. Subsection 2 of section 57 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 16, is amended by inserting after "*Act*" in the seventh line "*1978*".

s. 63 (1) (*d*), amended

4. Clause *d* of subsection 1 of section 63 of the said Act is amended by inserting after "*Act*" in the fourth line "*1978*".

s. 118 (2) (*b*), re-enacted

5. Clause *b* of subsection 2 of section 118 of the said Act is repealed and the following substituted therefor:

1978, c. . . .

(*b*) any solicitation by a person made under section 48 of *The Securities Act, 1978*; and

. . . . .

6. Section 148, as amended by the Statutes of Ontario, 1971, chapter 26, section 23, and sections 149, 150, 151 and 152 of the said Act are repealed. ss. 148-152, repealed

7.—(1) Clause *b* of subsection 1 of section 172 of the said Act is repealed and the following substituted therefor: s. 172 (1) (*b*), re-enacted

(*b*) in the case of a corporation that is offering its securities to the public, the financial statement required to be filed under *The Securities Act, 1978* 1978, c. ... and the regulations thereunder relating separately to,

(i) the period that commenced on the date of incorporation and ended as of the close of the first financial year or, if the corporation has completed a financial year, the last financial year, as the case may be, and

(ii) the period covered by the financial year next preceding the last financial year, if any.

(2) Subsection 2 of the said section 172 is repealed and the following substituted therefor: s. 172 (2), re-enacted

(2) It is not necessary to designate the statements referred to in clause *a* of subsection 1 as the statement of profit and loss, statement of surplus and balance sheet. Designation of statements

8.—(1) Clause *a*, and clauses *k* and *l* as enacted by the Statutes of Ontario, 1971, chapter 26, section 26 and amended by 1972, chapter 138, section 50, of subsection 1 of section 173 of the said Act are repealed. s. 173 (1) (*a*, *k*, *l*), repealed

(2) Subsection 2 of the said section 173, as amended by the Statutes of Ontario, 1972, chapter 138, section 50, is further amended by striking out "*h*, *k* and *l*" in the amendment of 1972 and inserting in lieu thereof "and *h*". s. 173 (2), amended

(3) Subsections 3 and 4 of the said section 173 are repealed. s. 173 (3, 4), repealed

9. Sections 175 and 176 of the said Act are repealed. ss. 175, 176, repealed

10.—(1) Paragraph 16, and paragraphs 18 to 21 as enacted by the Statutes of Ontario, 1971, chapter 26, section 28, of subsection 3 of section 178 of the said Act are repealed. s. 178 (3), pars. 16, 18-21 repealed

(2) Subsection 4 of the said section 178, as enacted by the Statutes of Ontario, 1972, chapter 138, section 51, is repealed. s. 178 (4), repealed

s. 179 (1), amended

11.—(1) Subsection 1 of section 179 of the said Act is amended by inserting after "corporation" in the second line "to which clause *a* of subsection 1 of section 172 applies".

s. 179 (3), amended

(2) Subsection 3 of the said section 179 is amended by inserting after "corporation" in the second line "to which either clause *a* or *b* of subsection 1 of section 172 applies".

s. 185, re-enacted

12. Section 185 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 30, is repealed and the following substituted therefor:

Interim financial statements

185.—(1) A corporation that is offering its securities to the public shall send to each shareholder a copy of an interim financial statement required to be filed under *The Securities Act, 1978* and the regulations thereunder.

1978, c. ...

Distribution to shareholders

(2) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation.

s. 251 (2), amended

13. Subsection 2 of section 251 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 67, section 1, is amended by striking out "section 134 of *The Securities Act*" in the second and third lines and in the sixth and seventh lines and inserting in lieu thereof in each instance "sections 76 and 77 of *The Securities Act, 1978*".

s. 260 (2), repealed

14.—(1) Subsection 2 of section 260 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 43, is repealed.

s. 260 (3), amended

(2) Subsection 3 of the said section 260 is amended by striking out "subsections 1 and 2" in the first line and inserting in lieu thereof "subsection 1".

s. 261 (2), re-enacted

15. Subsection 2 of section 261 of the said Act is repealed and the following substituted therefor:

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117 or subsection 1 of section 118 applies has failed to comply with or is contravening any such provision, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention and in addition to any other rights it may have, apply to the court for an order,

(*a*) directing such person or corporation to comply with such provision or restraining such person or corporation from contravening such provision; and

(*b*) directing the directors and senior officers of such person or corporation to cause such person or corporation to comply with or to cease contravening any such provision,

and upon such application, the court may make such order or such other order as the court thinks fit.

16. Section 269 of the said Act is repealed and the following substituted therefor: s. 269, re-enacted

269. Any person or corporation directly affected by a decision of the Commission under this Act may appeal to the Supreme Court and subsections 2 to 6 of section 9 of *The Securities Act, 1978* apply to the appeal. Appeal from Commission 1978, c. ...

17. Clause *e* of section 271 of the said Act is repealed. s. 271 (*e*), repealed

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

19. The short title of this Act is *The Business Corporations Amendment Act, 1978*. Short title

An Act to amend
The Business Corporations Act

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

June 23rd, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

Government Publications

BILL 10 Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

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An Act to amend the Discounting of Income Tax Refunds Act, 1977

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The Act is being amended to give to the Director of the Consumer Protection Division of the Ministry the power to freeze the assets of a person whom he reasonably believes is or is about to be in contravention of the Act or regulations.

Section 3 of the Act presently renders a discount of more than the permitted maximum invalid. The new section 4 (2) of the Act also makes it an offence to which section 10 (the penalty and restitution section) applies. The effect of the new section 4 (3) of the Act is to make it an offence to acquire a right to a tax refund by a payment other than cash or a cheque which is immediately payable.

BILL 10 **1978**

An Act to amend the Discounting of Income Tax Refunds Act, 1977

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Income Tax Discounters Act, 1977*, being chapter 55, is amended by relettering clause *a* as clause *aa* and by adding thereto the following clause: s. 1, amended

(*a*) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*. R.S.O. 1970, c. 113

2. Section 4 of the said Act is amended by adding thereto the following subsections: s. 4, amended

(2) No discounter shall give or offer to give to a taxpayer, in return for the right to receive a refund which is due or will become due to the taxpayer, a consideration of less than 95 per cent of the amount of the refund or such greater amount as may be prescribed by the regulations. Exceeding maximum discount prohibited

(3) No discounter shall acquire from a taxpayer the right to receive a refund unless the discounter pays the whole of the consideration for the acquisition at the time of the acquisition in cash or by cheque that is payable immediately. Consideration for acquisition to be cash or cheque

3. The said Act is amended by adding thereto the following sections: ss. 9*a*, 9*b*, enacted

9*a*.—(1) In this section, "person being investigated" means a person whom the Director, upon a statement made under oath, believes on reasonable and probable grounds has contravened, is contravening or is about to contravene any of the provisions of this Act or regulations. Interpretation

(2) The Director, if he believes it advisable for the protection of clients of a person being investigated may, in writing or by telegram, direct any person having on deposit Order to refrain from dealing with assets

or under control or for safekeeping any assets or trust funds of the person being investigated, to hold such assets or trust funds or direct the person being investigated to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-4, W-11

R.S.O. 1970, cc. 228, 89, 53

Bond in lieu

(3) Subsection 2 does not apply where the person being investigated files with the Director,

(*a*) a personal bond accompanied by collateral security;

(*b*) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or

R.S.O. 1970, c. 196

(*c*) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director determines.

Application for direction

(4) Any person in receipt of a direction given under subsection 2, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

Application for cancellation of direction

(5) Any person being investigated in respect of whom a direction has been given by the Director under subsection 2 may, at any time, apply to the court for cancellation in whole or in part of the direction and the court shall dispose of the application after a hearing and may, if it finds that such a direction is not required in whole or in part for the protection of consumers of the applicant or that the interests of other persons are unduly prejudiced thereby, cancel the direction in whole or in part, and the applicant, the Director and such other persons as the court may specify are parties to the proceedings before the court.

9*b*. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. Service of notice

4. Clause *d* of section 11 of the said Act is amended by striking out "section 3" in the third line and inserting in lieu thereof "sections 3 and 4". s. 11 (*d*), amended

5. This Act comes into force on the day it receives Royal Assent. Commencement

6. The short title of this Act is *The Income Tax Discounters Amendment Act, 1978*. Short title

An Act to amend
the Discounting of Income
Tax Refunds Act, 1977

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

(*Government Bill*)

1978

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Publicat

BILL 10

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislature Assembly

An Act to amend the Discounting of Income Tax Refunds Act, 1977

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 10 **1978**

An Act to amend the Discounting of Income Tax Refunds Act, 1977

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Income Tax Discounters Act, 1977*, being chapter 55, is amended by relettering clause *a* as clause *aa* and by adding thereto the following clause: s. 1, amended

(*a*) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*. R.S.O. 1970, c. 113

2. Section 4 of the said Act is amended by adding thereto the following subsections: s. 4, amended

(2) No discounter shall give or offer to give to a taxpayer, in return for the right to receive a refund which is due or will become due to the taxpayer, a consideration of less than 95 per cent of the amount of the refund or such greater amount as may be prescribed by the regulations. Exceeding maximum discount prohibited

(3) No discounter shall acquire from a taxpayer the right to receive a refund unless the discounter pays the whole of the consideration for the acquisition at the time of the acquisition in cash or by cheque that is payable immediately. Consideration for acquisition to be cash or cheque

3. The said Act is amended by adding thereto the following sections: ss. 9*a*, 9*b*, enacted

9*a*.—(1) In this section, "person being investigated" means a person whom the Director, upon a statement made under oath, believes on reasonable and probable grounds has contravened, is contravening or is about to contravene any of the provisions of this Act or regulations. Interpretation

(2) The Director, if he believes it advisable for the protection of clients of a person being investigated may, in writing or by telegram, direct any person having on deposit Order to refrain from dealing with assets

or under control or for safekeeping any assets or trust funds of the person being investigated, to hold such assets or trust funds or direct the person being investigated to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

R.S.C. 1970, cc. B-4, W-11

R.S.O. 1970, cc. 228, 89, 53

Bond in lieu

(3) Subsection 2 does not apply where the person being investigated files with the Director,

(*a*) a personal bond accompanied by collateral security;

(*b*) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or

R.S.O. 1970, c. 196

(*c*) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director determines.

Application for direction

(4) Any person in receipt of a direction given under subsection 2, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

Application for cancellation of direction

(5) Any person being investigated in respect of whom a direction has been given by the Director under subsection 2 may, at any time, apply to the court for cancellation in whole or in part of the direction and the court shall dispose of the application after a hearing and may, if it finds that such a direction is not required in whole or in part for the protection of consumers of the applicant or that the interests of other persons are unduly prejudiced thereby, cancel the direction in whole or in part, and the applicant, the Director and such other persons as the court may specify are parties to the proceedings before the court.

Service of notice

9*b*. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

s. 11 (*d*), amended

4. Clause *d* of section 11 of the said Act is amended by striking out "section 3" in the third line and inserting in lieu thereof "sections 3 and 4".

Commencement

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is *The Income Tax Discounters Amendment Act, 1978*.

BILL 10

An Act to amend
the Discounting of Income
Tax Refunds Act, 1977

1st Reading

February 28th, 1978

2nd Reading

March 7th, 1978

3rd Reading

March 7th, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

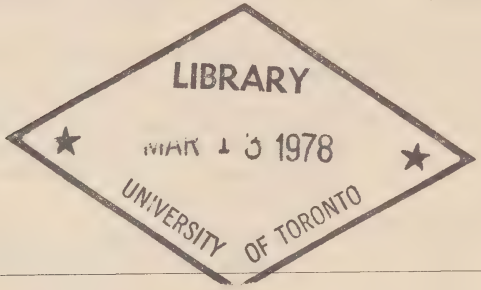
1978

Government Publications

BILL 11 **Government Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Vital Statistics Act



THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Notes

Section 1—Subsections 1 and 2. Section 6 (11) of the Act presently reads as follows:

(11) *Upon the joint request in the prescribed form of the mother and the husband referred to in subsection 4 or of the mother and person acknowledging himself to be the father under subsection 5 or 8, the birth of a child may be registered,*

(a) *where the registration is under subsection 4, showing the surname of the husband hyphenated or combined with, but followed by, the surname of the mother as the surname of the child; or*

(b) *where the registration is made under subsection 5 or 8 or amended under subsection 6 or 9, showing the surname of the person acknowledging himself to be the father, hyphenated or combined with, but followed by, the surname of the mother as the surname of the child.*

The underlined words are being deleted.

Subsection 3. The new provisions being added to the Act provide:

1. That where parents register a birth and use a hyphenated or combined surname as the surname of the child, then any subsequent registrations of births of children from the same parents shall show the same surname as the first child.

2. That where a birth was registered before this Act comes into force, then the Registrar General shall amend the registration if there is a request under section 6 (11).

Section 2. Section 2 of this Bill permits a change in the sex designation on the register of birth of a person following transsexual surgery and the subsequent issuance of a birth certificate showing the new sex designation as if it had been the original designation on the registration of birth.

BILL 11 **1978**

An Act to amend The Vital Statistics Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *a* of subsection 11 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1976, chapter 40, section 1, is amended by striking out "but followed by" in the third line. s. 6 (11) (*a*), amended

(2) Clause *b* of subsection 11 of the said section 6 is amended by striking out "but followed by" in the fifth line. s. 6 (11) (*b*), amended

(3) The said section 6, as amended by the Statutes of Ontario, 1973, chapter 114, section 3, 1976, chapter 40, section 1 and 1977, chapter 41, section 23, is further amended by adding thereto the following subsections: s. 6, amended

(12) Where a joint request is made under subsection 11 and a registration is made showing the surname of the husband or father, as the case may be, hyphenated or combined with the surname of the mother, the births of all children born to the persons making the joint application subsequent to the registration shall be registered in the surname given to the child whose birth was registered pursuant to the request under subsection 11. Registration of births after subs. 11 request

(13) Where a joint request is made under subsection 11 in respect of a registration of birth made before this Act comes into force, the Registrar General shall amend the registration in accordance with the joint request. Amendment of prior registration

2. The said Act is amended by adding thereto the following section: s. 31*a*, enacted

CHANGES RESULTING FROM TRANSSEXUAL SURGERY

31*a*.—(1) Where a person has had his anatomical sex structure changed to a sex other than that which appears Changing sex designation appearing on registration of birth

on his registration of birth, he may apply to the Registrar General to have the designation of sex on his registration of birth changed so that the designation will be consistent with the results of the transsexual surgery.

Application

(2) An application made under subsection 1 shall be accompanied by,

(*a*) a certificate signed by a medical practitioner legally qualified to practise medicine in the jurisdiction in which the transsexual surgery was performed upon the applicant, certifying that,

(i) he performed transsexual surgery on the applicant, and

(ii) as a result of the transsexual surgery, the designation of sex of the applicant should be changed on the registration of his birth;

(*b*) a certificate of a medical practitioner who did not perform the transsexual surgery but who is qualified and licensed to practise medicine in Ontario certifying that,

(i) he has examined the applicant,

(ii) the results of the examination substantiate that transsexual surgery was performed upon the applicant, and

(iii) as a result of the transsexual surgery, the description of the sex of the applicant should be changed on the registration of birth of the applicant; and

(*c*) evidence satisfactory to the Registrar General as to the identity of the applicant.

Alternate medical evidence

(3) Where it is not possible to obtain the medical certificate referred to in clause *a* of subsection 2, the applicant shall submit such medical evidence of the transsexual surgery as the Registrar General considers necessary.

Notation on birth registration to be consistent with result of surgery

(4) The Registrar General shall, upon application made to him in accordance with this section, cause a notation to be made on the birth registration of the applicant so that the registration is consistent with the results of the surgery.

(5) Every birth certificate issued after the making of a notation under this section shall be issued as if the original registration of birth had been made showing the designation of sex as changed under this section. Birth certificate issued after notation

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

4. The short title of this Act is *The Vital Statistics Amendment Act, 1978*. Short title

An Act to amend
The Vital Statistics Act

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

The Hon. L. Grossman
Minister of Consumer and
Commercial Relations

(*Government Bill*)

1978

Government
Publications

BILL 11

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Vital Statistics Act

THE HON. FRANK DREA
Minister of Consumer and Commercial Relations



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 11 **1978**

An Act to amend The Vital Statistics Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *a* of subsection 11 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1976, chapter 40, section 1, is amended by striking out "but followed by" in the third line. s. 6 (11) (*a*), amended

(2) Clause *b* of subsection 11 of the said section 6 is amended by striking out "but followed by" in the fifth line. s. 6 (11) (*b*), amended

(3) The said section 6, as amended by the Statutes of Ontario, 1973, chapter 114, section 3, 1976, chapter 40, section 1 and 1977, chapter 41, section 23, is further amended by adding thereto the following subsections: s. 6, amended

(12) Where a joint request is made under subsection 11 and a registration is made showing the surname of the husband or father, as the case may be, hyphenated or combined with the surname of the mother, the births of all children born to the persons making the joint application subsequent to the registration shall be registered in the surname given to the child whose birth was registered pursuant to the request under subsection 11. Registration of births after subs. 11 request

(13) Where a joint request is made under subsection 11 in respect of a registration of birth made before this Act comes into force, the Registrar General shall amend the registration in accordance with the joint request. Amendment of prior registration

2. The said Act is amended by adding thereto the following section: s. 31*a*, enacted

CHANGES RESULTING FROM TRANSSEXUAL SURGERY

31*a*.—(1) Where a person has had his anatomical sex structure changed to a sex other than that which appears Changing sex designation appearing on registration of birth

on his registration of birth, he may apply to the Registrar General to have the designation of sex on his registration of birth changed so that the designation will be consistent with the results of the transsexual surgery.

Application

(2) An application made under subsection 1 shall be accompanied by,

(*a*) a certificate signed by a medical practitioner legally qualified to practise medicine in the jurisdiction in which the transsexual surgery was performed upon the applicant, certifying that,

(i) he performed transsexual surgery on the applicant, and

(ii) as a result of the transsexual surgery, the designation of sex of the applicant should be changed on the registration of his birth;

(*b*) a certificate of a medical practitioner who did not perform the transsexual surgery but who is qualified and licensed to practise medicine in Ontario certifying that,

(i) he has examined the applicant,

(ii) the results of the examination substantiate that transsexual surgery was performed upon the applicant, and

(iii) as a result of the transsexual surgery, the description of the sex of the applicant should be changed on the registration of birth of the applicant; and

(*c*) evidence satisfactory to the Registrar General as to the identity of the applicant.

Alternate medical evidence

(3) Where it is not possible to obtain the medical certificate referred to in clause *a* of subsection 2, the applicant shall submit such medical evidence of the transsexual surgery as the Registrar General considers necessary.

Notation on birth registration to be consistent with result of surgery

(4) The Registrar General shall, upon application made to him in accordance with this section, cause a notation to be made on the birth registration of the applicant so that the registration is consistent with the results of the surgery.

(5) Every birth certificate issued after the making of a notation under this section shall be issued as if the original registration of birth had been made showing the designation of sex as changed under this section. Birth certificate issued after notation

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

4. The short title of this Act is *The Vital Statistics Amendment Act, 1978*. Short title

An Act to amend
The Vital Statistics Act

1st Reading

February 28th, 1978

2nd Reading

April 6th, 1978

3rd Reading

December 12th, 1978

THE HON. FRANK DREA
Minister of Consumer and
Commercial Relations

1978

Government Publications

BILL 12 Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to provide for the Designation and Retention of Foodlands

MR. SWART



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

This Bill provides for the classification of Ontario agricultural foodlands into classifications 1 to 4 of the *Agricultural and Rural Development Act* (Canada) and for the surveying, designation and preservation of such foodlands.

BILL 12 **1978**

An Act to provide for the Designation and Retention of Foodlands

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(*a*) "agricultural land" means any land available for any agricultural use, whether or not it is used for such purpose;

(*b*) "designated municipality" means a designated municipality as defined in *The Planning Act*, or a regional municipality; R.S.O. 1970, c. 349

(*c*) "foodland" includes,

(i) any agricultural land included in categories one to four inclusive of the classification prepared pursuant to subsection 2 of section 3 of the *Agricultural and Rural Development Act* (*ARDA*) (Canada) and contained in Canada Land Inventory—soil capability for agricultural series, and R.S.C. 1970, c. A-4

(ii) any special crop lands;

(*d*) "Minister" means the Minister of Housing or such other member of the Executive Council to whom the administration of *The Planning Act* is assigned;

(*e*) "planning area" means a planning area as defined in *The Planning Act*;

(*f*) "planning authority" means a planning board established under *The Planning Act* or a regional council where no planning board exists for a regional planning area.

Duties of planning authority

2. Every planning authority shall, within two years following proclamation of this Act,

(*a*) survey and classify all agricultural land situate within the planning area in accordance with the classifications established and defined in studies and maps prepared pursuant to the *Agricultural and Rural Development Act* (*ARDA*) (Canada);

R.S.C. 1970, c. A-4

(*b*) prepare a plan designating as foodlands those areas which can be defined as such and recommend such plan to the council of the designated municipality for adoption;

(*c*) develop planning criteria primarily designed to promote retention and protection of foodlands but which will permit non-agricultural use where justified.

Duty of council upon receipt of planning authority recommendation

3. The council of a designated municipality shall, when it receives the recommendation from the planning authority, adopt the plan by by-law.

Where agricultural land not in a planning area or is in a territory without municipal organization

4. Where agricultural land is situate in an area that has not been defined as a planning area or is in a territory without municipal organization, the Minister shall define and name a planning area and may appoint a planning board for the planning area.

Limitation re non-agricultural use

5. No agricultural land, which, prior to the completion of a planning study pursuant to section 2 is likely to be defined as foodland, may be authorized for a non-agricultural use without the specific recommendation of the planning authority.

Minister's authority re foodlands programs

6. The Minister may cause to be prepared and undertaken, directly or in co-operation with any municipality, programs of research and investigation respecting the use, retention, protection and economic development of foodlands in that municipality.

Commencement

7. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

8. The short title of this Act is *The Foodlands Protection Act, 1978*.

An Act to provide for the Designation and Retention of Foodlands

1st Reading

February 28th, 1978

2nd Reading

3rd Reading

MR. SWART

(*Private Member's Bill*)

1978

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Government
Publications

BILL 13 **Private Member's Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Proceedings Against the Crown Act

MR. KENNEDY

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TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of this Bill is to clarify the law with respect to the right to garnishee the wages of a Crown employee who is employed by a Crown agency and whose salary or wages are not paid from the Consolidated Revenue Fund by providing that a Crown agency is subject to garnishment proceedings.

BILL 13 **1978**

An Act to amend The Proceedings Against the Crown Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Proceedings Against the Crown Act*, being chapter 365 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 25*a*, enacted

25*a*. Notwithstanding section 25, a Crown agency is subject to garnishment proceedings where the payment of salary or wages is not made from the Consolidated Revenue Fund. Crown agency may be garnisheed

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Proceedings Against the Crown Amendment Act, 1978*. Short title

An Act to amend
The Proceedings Against the Crown Act

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

MR. KENNEDY

(*Private Member's Bill*)

1978

Government Publications

BILL 14 Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act respecting Small Business in Ontario

MR. EAKINS



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of this Bill is to provide for the preservation and expansion of small business enterprise in Ontario. The Bill provides for government efforts relating to tendering policy, subcontracting, research and development and small business co-operatives as a means of providing support for small business enterprise.

BILL 14 **1978**

An Act respecting Small Business in Ontario

Preamble

WHEREAS the essence of Ontario's socio-economic system is embodied in the principles of free enterprise, competition and diversity; and whereas the preservation and expansion of these principles is essential to the basic welfare and security of the people of the Province of Ontario, as well as to the growth of personal initiative; and whereas this Legislature wishes to grant formal recognition to, and give fair and equitable support for that sector of the economy that most effectively preserves and enhances free, competitive enterprise;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1.—(1) In this Act,

(*a*) "Minister" means the Minister of Industry and Tourism;

(*b*) "small business" means a business that is independently owned and operated and is not dominant in its field of operation.

Minister may determine small business

(2) The Minister may by regulation further define a small business having regard to other criteria including the number of employees and the dollar volume of business.

Idem

(3) Where the number of employees is used as one of the criteria referred to in subsection 2, the maximum number of employees stated in the definition may vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

Objects

2.—(1) The Government of Ontario shall aid, counsel, assist and protect, in so far as possible, the interests of small business.

Government purchases from small businesses

(2) In order to preserve free competitive enterprise, the Government of Ontario shall,

(*a*) establish a target of 40 per cent of the total purchases and contracts or subcontracts for goods, services and real property purchased or made by the Government to be placed with small businesses within three years of the date this Act comes into force; and

(*b*) ensure that a fair proportion of the total sales and leases of Government property be transacted with small businesses.

Small business certificate

3.—(1) There shall be a certificate known as the Small Business Certificate to designate a concern, firm, person, corporation, partnership, co-operative or other business enterprise that is a small business for the purpose of this Act that is determined to be in a sound financial and productive position.

Minister issues certificate

(2) Upon application, the Minister shall issue a certificate certifying a business as a small business that is in a sound financial and productive position.

Revocation

(3) A Small Business Certificate is subject to revocation by the Minister when the business covered thereby ceases to be a small business or is no longer determined to be in a sound financial and productive position.

Notice in *Ontario Gazette*

(4) Notice shall be published in *The Ontario Gazette* within thirty days of the issuance of a Small Business Certificate or of the giving of notice with respect to revoking such a certificate.

Idem

(5) A Small Business Certificate is deemed to be revoked within thirty days of publication in *The Ontario Gazette* of a notice to revoke, provided that such notice is also served on the small business prior to publication in *The Ontario Gazette*, and attestation of such service shall be given together with the notice to revoke when so published.

Idem

(6) Offices of the Government having procurement or lending powers, or engaging in the disposal of property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies shall accept

as conclusive the Minister's determination as to which enterprises are to be designated as authorized and directed under this section.

(7) An appeal from the Minister's decision to revoke under this section involving questions of law or jurisdiction lies to the Supreme Court of Ontario. Appeal

(8) An appeal from the Minister's decision to revoke under this section lies to the Lieutenant Governor in Council. Idem

(9) Where the Minister revokes a Small Business Certificate, he shall provide written reasons for his decision. Written reasons

4.—(1) Where tenders are sought by the Government, any of its ministries or agencies, including Crown Corporations, for the purchase by the Government of goods, services or real property, and in which tender is included the information that it holds a Small Business Certificate, if such tender is not higher than any other qualified tender, and it meets all specified minimum requirements to qualify as a valid tender, then such tender by the small business shall be accepted. Government tenders

(2) The Minister shall be provided with notice of all proposed procurement actions of value exceeding $5,000 from any provincial ministry, establishment, or agency engaged in procurement of supplies and services in the Province of Ontario and he shall publicize such notices in *The Ontario Gazette*, immediately after the necessity for the procurement is established, except that nothing herein shall require publication of such notices with respect to those procurements, Notice of procurements

(*a*) that for security reasons are of a classified nature;

(*b*) that involve perishable subsistence supplies;

(*c*) that are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made;

(*d*) that are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than fifteen days after the issuance of the invitation for bids or solicitation for proposals;

(*e*) that are made by an order placed under an existing contract;

(*f*) that are made from another Government ministry or agency, or a mandatory source of supply;

(*g*) that are for personal or professional services;

(*h*) that are for services from educational institutions;

(*i*) in which only foreign sources are to be solicited; and

(*j*) for which it is determined in writing by the procuring agency, with the concurrence of the Minister that advance publicity is not appropriate or reasonable.

Small business subcontracting program

5.—(1) The Minister shall develop forthwith a small business subcontracting program containing provisions,

(*a*) to enable small businesses to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts; and

(*b*) to enable the Ministry to obtain from any Government procurement agency such available or reasonably obtainable information and records concerning subcontracting by its prime contractors and their subcontractors as the Ministry may deem necessary.

Matters not to be dealt with in program

(2) Subsection 1 shall not be construed to authorize the Minister,

(*a*) to prescribe the extent to which any contractor or subcontractor shall subcontract;

(*b*) to specify the businesses to which subcontracts shall be granted; or

(*c*) to vest in the Minister authority respecting the administration of individual prime contracts or subcontracts.

Subcontracting a favourable factor

(3) The program shall provide that in evaluating bids or in selecting contractors for negotiated contracts the extensive use of subcontractors by a proposed contractor shall be considered a favourable factor.

Small business loans officer

(4) The program shall provide that any firm awarded a government contract over $500,000 shall employ a small

business liaison officer, who may already be a member of the firm, to be responsible for subcontracting portions of the work to small businesses, wherever possible.

Required contractual provisions

(5) Every contract for goods, services or real property, including contracts for research and development, maintenance, repair and construction, but not including contracts to be performed entirely outside the Province of Ontario, in excess of $500,000, made by a Government ministry or agency, that in the opinion of the procuring agency offers substantial subcontracting possibilities, shall require the contractor,

(*a*) to conform to the small business subcontracting program; and

(*b*) to insert in all subcontracts and purchase orders in excess of $250,000 that offer substantial possibilities for further subcontracting a provision requiring the subcontractor or supplier to conform to the small business subcontracting program.

Research and development

6.—(1) It shall be the duty of the Minister and he is hereby empowered,

(*a*) to assist small businesses to obtain Government contracts for research and development;

(*b*) to instruct Government agencies and ministries to contract out as much research and development work as possible;

(*c*) to assist small business to benefit from research and development performed under Government contracts or at Government expense;

(*d*) to provide technical assistance to small business and to simplify application procedures in order to accomplish the purposes of this section;

(*e*) to give preference to Canadian owner-managed businesses in allocating research grants and loans; and

(*f*) to publish information as to facilities available through small businesses for research and development.

Idem

(2) The Minister may consult and co-operate with all Government agencies and make studies and recommendations

to such agencies, and such agencies shall co-operate with the Minister in order to carry out and accomplish the purposes of this section.

Co-operatives

7.—(1) The Minister may consult with any representative of one or more small businesses to encourage the formation of co-operatives formed and capitalized by a group of small businesses with resources provided by them for the provision of central services, or for the purpose of obtaining for the use of such small businesses raw materials, equipment, inventories, supplies or the benefits of research and development, or for establishing facilities to undertake and utilize applied research.

Co-operatives may be certified

(2) The Minister may certify a co-operative as a member of a special class of small business and may issue the certificate referred to in section 3.

Idem

(3) The Minister may provide advisory services regarding the mechanics of establishing co-operatives.

Powers of Minister

8. The Minister may,

(*a*) enter into contracts with any provincial government or the Government of Canada and any ministry, agency, or officer thereof having procurement powers obligating the Minister to furnish articles, equipment, supplies or materials to Ontario, and in any case in which the Minister certifies to any officer of Ontario having procurement powers that the Ministry of Industry and Tourism is competent to perform any specific government procurement contract to be let by any such officer, such officer shall be authorized, in his discretion, to let such procurement contract to the Ministry of Industry and Tourism upon such terms and conditions as may be agreed upon between the Minister and the procurement officer;

(*b*) arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Ministry of Industry and Tourism to perform such contracts;

(*c*) provide technical and managerial aids to small business concerns, by advising and counselling on

matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing business insurance, accident control, wage incentives, and methods engineering, by,

(i) co-operating and advising with voluntary business, professional, educational, and other non-profit organizations, associations and institutions and with other governmental agencies,

(ii) maintaining a clearinghouse for information concerning the managing, financing and operation of small business enterprises,

(iii) disseminating such information, and

(iv) such other activities as are deemed appropriate by the Minister;

(*d*) co-ordinate and ascertain the means by which the productive capacity of small businesses can be most effectively utilized;

(*e*) consult and co-operate with officers of the Government having procurement or property disposal powers in order to utilize the potential productive capacity of plants operated by small businesses;

(*f*) obtain information as to methods and practices that government prime contractors utilize in letting subcontracts by prime contractors to small businesses at prices and on conditions and terms which are fair and equitable;

(*g*) determine within any industry the concerns, firms, persons, corporations, partnerships, co-operatives, or other business enterprises that may be designated as small businesses for the purposes of this Act;

(*h*) serve as a focal point to receive complaints, criticisms and suggestions concerning the policies and activities of the Ministry of Industry and Tourism and any other government agency that affects small business;

(*i*) represent the views and interests of small businesses before other agencies whose policies and activities may affect small businesses;

(*j*) enlist the co-operation and assistance of public and private agencies, businesses and other organizations in disseminating information about the programs and services provided by the Government that are of benefit to small businesses and information concerning the manner in which small businesses can participate in or make use of such programs and services; and

(*k*) receive reports from Government agencies and ministries concerning the progress in procurement and contracting to small business.

Standing committee

9. There shall be a standing committee of the Assembly to be known as the Small Business Committee, that shall report annually to the Assembly if it is in session or, if not, at the next ensuing session, on all aspects meriting legislative attention with respect to small businesses, and that shall consider,

(*a*) proposed legislation and legislative reform;

(*b*) the state of governmental and private assistance available respecting training, manpower and management development, research, technical and scientific assistance;

(*c*) the competitive strength of small business;

(*d*) representations from small business groups;

(*e*) the proposals for changes in the policies and activities of any agency of the Government that will better fulfill the purposes of this Act and communicate such proposals to the appropriate agencies; and

(*f*) such other matters dealing with small businesses as the standing committee in its opinion considers appropriate.

Regulations

10.—(1) The Lieutenant Governor in Council shall make regulations prescribing the criteria for determining whether a small business is in a sound financial and productive position.

Idem

(2) The Lieutenant Governor in Council may prescribe regulations implementing the small business subcontracting program.

11. Nothing in this Act shall be construed to authorize any ministry or agency of the Government to disseminate technical data or processes developed by any business under this Act. Confidentiality

12. This Act comes into force on the day it receives Royal Assent. Commencement

13. The short title of this Act is *The Small Business Act, 1978*. Short title

An Act respecting
Small Business in Ontario

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

Mr. Eakins

(*Private Member's Bill*)

1978

Government
Publications

BILL 15 Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Liquor Licence Act, 1975

MR. MANCINI

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PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of the Bill is to increase the legal drinking age in Ontario from eighteen to nineteen years of age.

Section 45 as amended by this Bill, showing underlined the age references to be changed, is set out below:

45.—(1) No person shall knowingly sell or supply liquor to a person under the age of nineteen years.

(2) No liquor shall be sold or supplied to a person who is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years.

(3) No person under the age of nineteen years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor.

(4) No person under the age of nineteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations.

(5) This section does not apply to the supplying of liquor to a person under the age of nineteen years by the parent or guardian of such person in a residence as defined in section 46 or to the consumption of liquor therein by such person.

(6) A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection 1 or 2 if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it.

(7) Any person who is or who becomes eighteen years of age on the day immediately preceding the day The Liquor Licence Amendment Act, 1977, comes into force shall continue to have the rights and privileges he had under The Liquor Licence Act, 1975 as it existed on that day and while such a person is of the actual age of eighteen years he shall for the purposes of this section be deemed to be nineteen years of age.

BILL 15 **1978**

An Act to amend The Liquor Licence Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 45 of *The Liquor Licence Act, 1975*, being chapter 40, is amended by striking out "eighteen" in the second line and inserting in lieu thereof "nineteen". s. 45 (1), amended

(2) Subsection 2 of the said section 45 is amended by striking out "eighteen" in the second line and in the sixth line and inserting in lieu thereof in each instance "nineteen". s. 45 (2), amended

(3) Subsection 3 of the said section 45 is amended by striking out "eighteen" in the first line and inserting in lieu thereof "nineteen". s. 45 (3), amended

(4) Subsection 4 of the said section 45 is amended by striking out "eighteen" in the first line and inserting in lieu thereof "nineteen". s. 45 (4), amended

(5) Subsection 5 of the said section 45 is amended by striking out "eighteen" in the second line and inserting in lieu thereof "nineteen". s. 45 (5), amended

(6) Section 45 of the said Act is amended by adding thereto the following subsection: s. 45, amended

(7) Any person who is or who becomes eighteen years of age on the day immediately preceding the day *The Liquor Licence Amendment Act, 1977* comes into force shall continue to have the rights and privileges he had under *The Liquor Licence Act, 1975* as it existed on that day and while such a person is of the actual age of eighteen years he shall for the purposes of this section be deemed to be nineteen years of age. Transition

Commencement

2. This Act comes into force on the 1st day of March, 1978.

Short title

3. The short title of this Act is *The Liquor Licence Amendment Act, 1978*.

An Act to amend
The Liquor Licence Act, 1975

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

MR. MANCINI

(*Private Member's Bill*)

1978

Government
Publications

BILL 16 Private Member's Bill

2nd Session, 31st Legislature, Ontario
27 Elizabeth II, 1978

Legislative Assembly

An Act to amend The Ontario Food Terminal Act

Mr. Pope



TORONTO
Printed by J. C. Thatcher, Queen's Printer for Ontario

Explanatory Note

The purpose of this Bill is to authorize the Ontario Food Terminal Board to establish a branch operation in the Territorial District of Cochrane.

BILL 16 **1978**

An Act to amend The Ontario Food Terminal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *g* of section 1 of *The Ontario Food Terminal Act*, being chapter 313 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 1 (*g*), re-enacted

(*g*) "Terminal" means the Ontario Food Terminal and includes all branches thereof.

2. Clause *a* of subsection 1 of section 4 of the said Act is repealed and the following substituted therefor: s. 4 (1) (*a*), re-enacted

(*a*) to acquire, construct, equip and operate a wholesale fruit and produce market to be known as the Ontario Food Terminal and to operate branches thereof in The Municipality of Metropolitan Toronto or Regional Municipality of York and the Territorial District of Cochrane and to acquire and operate such facilities for the transportation and handling of fruit and produce as may be necessary for the purposes of the Terminal; and

. . . . . .

3. Subsection 2 of section 12 of the said Act is repealed and the following substituted therefor: s. 12 (2), re-enacted

(2) No person shall establish or operate within the Territorial District of Cochrane any market for the sale by wholesale of fruit and vegetables except with the approval of the Board, but this section does not apply to any such market that was being regularly and continuously operated on the day *The Ontario Food Terminal Amendment Act, 1977*, comes into force so long as it is not extended or enlarged. Markets in Cochrane

Interpretation

(3) In subsections 1 and 2, the expression "any market for the sale by wholesale of fruit and vegetables" includes any premises at which fruit or vegetables are purchased for resale.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is *The Ontario Food Terminal Amendment Act, 1978*.

An Act to amend
The Ontario Food Terminal Act

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

MR. POPE

(*Private Member's Bill*)

1978

Government
Publications

BILL 17 Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Petty Trespass Act



MR. EATON

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

The purpose of this Bill is to remove requirements from the Act that land be enclosed or that land must be posted before one can be considered a trespasser. It places the onus on persons to ask permission to enter another person's land and increases the maximum fine to $1,000 from the present $100. It removes liability from a property owner for trespassers unless deliberate intent to do harm to the trespasser is involved.

BILL 17 **1978**

An Act to amend The Petty Trespass Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Petty Trespass Act*, being chapter 347 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 1, re-enacted

1.—(1) Every person who unlawfully enters or in any other way trespasses upon another person's land without written permission and whether or not any damage has been occasioned thereby is guilty of an offence and on summary conviction is liable to a fine of not more than $1,000. Offence of petty trespass

(2) Where an offence under subsection 1 is committed by means of a motor vehicle or any type of recreational vehicle, the driver of the vehicle, not being the owner, is liable to the fine provided under subsection 1 and the owner of the vehicle is also liable to the fine provided under subsection 1 unless at the time the offence was committed the vehicle was in the possession of a person other than the owner or his chauffeur without the owner's consent. Trespass by means of motor vehicle

2. The said Act is amended by adding thereto the following section: s. 6, enacted

6. An occupier of land owes no duty of care toward a person who is a trespasser except the duty to not create a danger with the deliberate intent of doing harm or damage to the trespasser or do a wilful act with reckless disregard of the presence of the trespasser. Duty of occupier

3. This Act comes into force on the day it receives Royal Assent. Commencement

4. The short title of this Act is *The Petty Trespass Amendment Act, 1978*. Short title

An Act to amend
The Petty Trespass Act

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

Mr. Eaton

(*Private Member's Bill*)

1978

Government
Publications

BILL 18 Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act respecting Special Education Programs



MS. GIGANTES

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

This Bill guarantees access to education to all children of compulsory school age who suffer from any kind of chronic physical disability, or any kind of learning disability including the blind, deaf, autistic, mentally handicapped and perceptually handicapped, or for children who are exceptionally gifted.

BILL 18 **1978**

An Act respecting Special Education Programs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act, "board" means a board of education, public school board, secondary school board, Roman Catholic separate school board or Protestant separate school board.

Board to establish special education programs

2. Every board shall,

(*a*) establish special education programs to provide special education services to pupils who require such services in order to make educational progress and who have a right to attend a school under the jurisdiction of the board;

(*b*) establish special education programs to provide special education services to gifted pupils who require such services in order to realize their full learning potential;

(*c*) establish and administer tests for the purpose of testing the children, with parents' or guardian's consent, under the jurisdiction of the board in order to determine those children who are likely to benefit from special education programs provided by the board.

Alternative educational services

3. The fact that a child is chronically physically disabled, blind, deaf, autistic, mentally handicapped or suffers from a perceptual handicap or other learning disability, or that a child is exceptionally gifted does not release a board from its duty under this Act to provide special education services to that child unless the child's parent or guardian consents to the placing of that child in and the child is admitted to a school or class for trainable retarded children, the Ontario School

for the Blind, an Ontario School for the Deaf, or other educational institution adequate to meet the child's needs.

Costs to be borne by board

4. Where a child receives special education services from a board or other educational institution referred to in section 3, any additional transportation, food and accommodation costs incurred as a result of that child receiving such services shall be paid,

(*a*) by the board that has jurisdiction over the child; or

(*b*) where the child attends an educational institution not under board jurisdiction, by the board that would have jurisdiction over the child if that child was not receiving special education services.

Consent required

5. Nothing in this Act shall be deemed to authorize a board to place a child in a special education program without the consent of the parent or guardian of that child and where a parent or guardian refuses to provide such consent, the board is under a duty to integrate the child into the regular school program and to make all reasonable effort to help the child make educational progress in that program.

Commencement

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is *The Special Education Programs Act, 1978*.

An Act respecting
Special Education Programs

1st Reading

March 2nd, 1978

2nd Reading

March 2nd, 1978

3rd Reading

MS. GIGANTES

(*Private Member's Bill*)

1978

Ministry of the Attorney General

BILL 19 Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Mental Health Act

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THE HON. D. R. TIMBRELL
Minister of Health

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Notes

Section 1. The definitions are complementary to the amendments that follow in the Bill.

BILL 19 **1978**

An Act to amend The Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mental Health Act*, being chapter 269 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses: s. 1. amended

(*ca*) "involuntary patient" means a person who is detained in a psychiatric facility under a certificate of involuntary admission or a certificate of renewal;

. . . . .

(*fa*) "mentally competent" means having the ability to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent;

. . . . .

(*ga*) "nearest relative" means,

(i) the spouse who is of any age and mentally competent, or

(ii) if none or if the spouse is not available, any one of the children who has attained the age of majority and is mentally competent, or

(iii) if none or if none is available, either of the parents who is mentally competent or the guardian, or

(iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or

(v) if none or if none is available, any other of the next of kin who has attained the age of majority and is mentally competent;

. . . . .

(*ha*) "out-patient" means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;

. . . . .

(*ja*) "prescribed" means prescribed by the regulations.

s. 8. re-enacted

2. Section 8 of the said Act is repealed and the following substituted therefor:

Application for psychiatric assessment

8.—(1) Where a physician examines a person and has reason to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

Contents of application

(2) An application under subsection 1 shall set out clearly that the physician who signs the application personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person.

Idem

(3) A physician who signs an application under subsection 1,

SECTION 2. Section 8 of the Act is re-enacted to change the grounds for admission from "mental disorder of a nature or degree so as to require hospitalization in the interests of his own safety or the safety of others" to "mental disorder of a nature or quality that likely will result in bodily harm to another person or imminent and serious physical impairment of the person".

Also, the authority to convey a person to a psychiatric facility is now set out as the authority to take in custody, and the authority of the psychiatric facility is now to detain the person and to restrain, observe and examine him.

SECTION 3.—Subsection 1. Section 9 of the Act is amended so that the grounds for an order by a justice of the peace will be the same as the grounds for an application by a physician under section 8.

Subsection 2. Subsection 1 of section 9 provides that the justice of the peace may make an order for an assessment by a physician where, upon the information before him, he is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in the consequences set out in clauses *d*, *e* and *f* of subsection 1.

Subsection 3. The effect of the re-enactment is that the purpose of an order under the section is to provide for an assessment by a physician rather than a medical examination.

(*a*) shall set out in the application the facts upon which he formed his opinion as to the nature and quality of the mental disorder;

(*b*) shall distinguish in the application between the facts observed by him and the facts communicated to him by others; and

(*c*) shall note in the application the date on which he examined the person who is the subject of the application.

Signing of application

(4) An application under subsection 1 is not effective unless it is signed by the physician within seven days after he examined the person who is the subject of the examination.

Authority of application

(5) An application under subsection 1 is sufficient authority for seven days from and including the day on which it is signed by the physician,

(*a*) to any person to take the person who is the subject of the application in custody to a psychiatric facility; and

(*b*) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in the facility for not more than seventy-two hours.

3.—(1) Subsection 1 of section 9 of the said Act is repealed and the following substituted therefor: s. 9 (1), re-enacted

Justice of the peace's order for psychiatric assessment

(1) Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and upon the information before him the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the justice of the peace may issue his order in the prescribed form for the assessment of the person by a physician.

s. 9 (2), repealed

(2) Subsection 2 of the said section 9 is repealed.

s. 9 (4), re-enacted

(3) Subsection 4 of the said section 9 is repealed and the following substituted therefor:

Authority of order

(4) An order under this section shall direct, and is sufficient authority for, any constable or other peace officer to whom it is addressed to take the person named or described therein in custody to an appropriate place where he may be detained for assessment by a physician.

ss. 10, 11, 12, re-enacted

4. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Action by peace officer

10. Where a constable or other peace officer observes a person who acts in a manner that in a normal person would be disorderly and has reason to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and the constable or other peace officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

and that it would be dangerous to proceed under section 9, the constable or other peace officer may take the person in custody to an appropriate place for assessment by a physician.

SECTION 4. Section 10 of the Act is re-enacted so that the grounds for action by a constable or other peace officer, in addition to observing conduct that in a normal person would be disorderly, will be the same as for an order by a justice of the peace under section 9 or an application by a physician under section 8.

The re-enactment of section 11 is complementary to the changes to sections 8, 9 and 10.

Section 12 is re-enacted to provide for the procedure by which an informal patient may become an involuntary patient.

SECTION 5. Subsections 1 to 3 of section 13 of the Act are re-enacted as subsections 1 to 3*b* to clarify the procedure to be followed after an assessment by a physician and to reduce the time periods under certificates of renewal.

11. An assessment under section 9 or 10 shall be conducted by a physician forthwith after receipt of the person at the place of assessment and where practicable the place shall be a psychiatric facility or other health facility. Place of psychiatric assessment

12. Subject to subsection *3b* of section 13, the attending physician may change the status of an informal patient to that of an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission. Change from informal patient to involuntary patient

5. Subsections 1 to 3 of section 13 of the said Act are repealed and the following substituted therefor: s. 13 (1-3), re-enacted

(1) The attending physician, after observing and examining a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25, Duty of attending physician

(*a*) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;

(*b*) shall admit the person as an informal patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal patient; or

(*c*) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion both that the person is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal patient.

(2) The physician who completes a certificate of involuntary admission pursuant to clause *c* of subsection 1 shall not be the same physician who completed the application for psychiatric assessment pursuant to section 8. Physician who completes certificate of involuntary admission

Release of person by officer in charge

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25 upon the completion of seventy-two hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal patient or has admitted the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

Authority of certificate

(3*a*) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(*a*) for not more than two weeks under a certificate of involuntary admission; and

(*b*) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician.

Conditions precedent to making of certificate of involuntary admission or certificate of renewal

(3*b*) The attending physician shall not complete a certificate of involuntary admission or a certificate of renewal unless, after he has examined the patient, he is of the opinion both,

(*a*) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(*b*) that the patient is not suitable for admission or continuation as an informal patient.

SECTION 6. The subsection is amended to provide for taking a person who is absent without leave to the nearest psychiatric facility.

SECTION 7. The re-enactment of the section is complementary to the re-enactment of section 8 of the Act.

SECTION 8. The section prevents simple delivery of a person to a psychiatric facility by requiring the constable, other peace officer or other person to remain and to retain custody until the facility accepts custody.

SECTION 9. New section 26*a* of the Act relates to the disclosure of information from or the disclosure, transmittal or examination of the clinical record of a patient.

Subsections 6 and 7 relate to the disclosure of material from the clinical record pursuant to a subpoena, order, direction, notice or similar requirement. Subsection 8 provides for the return of material to the officer in charge of the psychiatric facility. Subsection 9 relates to the disclosure, in an action or proceeding in any court, of information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient.

6. Subsection 1 of section 21 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor: s. 21 (1), amended

(1) Where a person who is subject to detention is absent without leave from a psychiatric facility, a constable or other peace officer or any one appointed by the officer in charge may return the person to the psychiatric facility or take the person to the psychiatric facility nearest to the place where the person is apprehended, Unauthorized absence

. . . . .

7. Section 25 of the said Act is repealed and the following substituted therefor: s. 25, re-enacted

25. Where the Minister has reason to believe that there may come or be brought into Ontario a person suffering from mental disorder of a nature or quality that likely will result in, Mentally disordered person coming into Ontario

(*a*) serious bodily harm to the person; or

(*b*) serious bodily harm to another person,

unless the person is placed in the custody of a psychiatric facility, the Minister by an order in the prescribed form may authorize any one to take the person in custody to a psychiatric facility and the order is authority to admit, detain, restrain, observe and examine the person in the psychiatric facility.

8. The said Act is amended by adding thereto the following section: s. 25*a*, enacted

25*a*. A constable or other peace officer or any one who takes a person in custody to a psychiatric facility shall remain at the facility and retain custody of the person so taken until the facility accepts the custody of the person. Duty of constable, other peace officer or other person

9. The said Act is further amended by adding thereto the following section: s. 26*a*, enacted

26*a*.—(1) In this section, Interpretation

(*a*) "clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;

(*b*) "patient" includes former patient, out-patient, and former out-patient.

Disclosure of clinical record

(2) Except as provided in subsections 3 and 5 no person shall disclose, transmit or examine a clinical record.

Idem

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge may disclose or transmit the clinical record to or permit the examination of the clinical record by,

(*a*) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;

(*c*) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or treating or assisting in assessing or treating the patient;

(*d*) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;

(*e*) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;

(*f*) a person for the purpose of research, academic pursuits or the compilation of statistical data.

Use of material in clinical record for research, study or statistics

(4) Where a clinical record,

(*a*) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and

(*b*) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying

the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.

Disclosure pursuant to subpoena

(5) Subject to subsections 6 and 7, the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any other Act.

Statement by attending physician

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any other Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

(*a*) is likely to result in harm to the treatment or recovery of the patient; or

(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician, except pursuant to an order of the court or, in the case of any other Act, the body before which the matter is or may be in issue, made after a hearing as to the likelihood of such a result held on notice to the attending physician.

Matters to be considered by court or body

(7) On a hearing under subsection 6, the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

(*a*) is likely to result in harm to the treatment or recovery of the patient; or

(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely, the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of clinical record to officer in charge

(8) Where a clinical record is required pursuant to subsection 5 or 6, the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.

Disclosure in action or proceeding

(9) No person shall disclose in an action or proceeding in any court or before any other body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

(*a*) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or

(*c*) where the court or body determines that the disclosure is essential in the interests of justice.

s. 28 (1), re-enacted

10.—(1) Subsection 1 of section 28 of the said Act is repealed and the following substituted therefor:

Application for review by patient, etc.

(1) An involuntary patient, or any person on his behalf, may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether the patient is suffering from mental disorder of a nature or quality that likely will result in,

(*a*) serious bodily harm to the patient;

(*b*) serious bodily harm to another person; or

(*c*) imminent and serious physical impairment of the patient,

unless the patient remains an involuntary patient in the custody of a psychiatric facility.

s. 28 (2), amended

(2) Subsection 2 of the said section 28 is amended by relettering clauses *a* and *b* as clauses *b* and *c* and by adding thereto the following clause:

SECTION 10.—Subsections 1 and 2. The re-enactment of subsection 1 and the amendment of subsection 2 of section 28 of the Act are complementary to the enactment of new clause *c* of subsection 1 of section 13 of the Act by this Bill.

Subsection 3. New subsection 4 provides for an automatic review by the review board after a fourth certificate of renewal (six months) and after every fourth renewal (twelve months) thereafter.

SECTION 11. The sections are re-enacted to provide for both patients and out-patients.

Subsection 3 is added to section 32 of the Act to require the physician or attending physician to enter his determination as to competency in the clinical record together with written reasons.

Subsection 4 of section 32 provides for the issuing of a certificate of incompetence to manage his estate in respect of a patient or an out-patient.

Subsection 1 of section 37 provides for an examination within twenty-one days of the discharge of a patient or out-patient and for the issuing of a notice of continuance where the physician is of the opinion, after the examination, that the patient or out-patient will not be competent to manage his estate.

In addition, section 37 of the Act is amended to require the officer in charge to give notice to the Public Trustee of the discharge of a patient in respect of whom a certificate of incompetence is in force.

(*a*) when a certificate of involuntary admission respecting the patient comes into force.

(3) The said section 28 is amended by adding thereto the following subsections: s. 28, amended

(4) On the completion of a fourth certificate of renewal and on the completion of every fourth certificate of renewal thereafter, the patient shall be deemed to have applied in the prescribed form pursuant to subsection 1 to the chairman of the review board having jurisdiction. Where notice deemed to have been given

(5) Notwithstanding that a hearing is required or an appeal is taken against a certificate of involuntary admission or a certificate of renewal, the certificate is effective until confirmed or rescinded on a hearing. Effect of certificate

11. Sections 32 to 38 of the said Act are repealed and the following substituted therefor: ss. 32-38, re-enacted

32.—(1) Forthwith upon the admission of a patient to a psychiatric facility, a physician shall examine the patient to determine whether or not he is competent to manage his estate. Examination as to competency to manage estate, upon admission

(2) The attending physician may examine a patient and a physician may examine an out-patient at any time to determine whether or not the patient or out-patient is competent to manage his estate. Idem

(3) After an examination under subsection 1 or 2, the physician or attending physician, as the case may be, shall enter his determination, together with written reasons therefor, in the clinical record prepared in respect of the patient. Entry of determination and reasons in clinical record

(4) A physician or attending physician who performs an examination under subsection 1 or 2 and who is of the opinion that the patient or out-patient is not competent to manage his estate shall issue a certificate of incompetence in the prescribed form and the officer in charge shall transmit the certificate to the Public Trustee. Certificate of incompetence

(5) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the officer in charge or, where the officer in charge is not present in the psychiatric facility, the physician or attending physician shall notify the Public Trustee in the fastest manner possible that a certificate of incompetence has been issued. Idem, exceptional circumstances

(6) A patient or out-patient may appoint the Public Trustee as committee of the estate of the patient or out-patient. Appointment by patient

(7) An appointment under subsection 6, Idem

(*a*) is not valid unless it is signed and sealed by the patient or out-patient; and

(*b*) may be revoked by a written revocation signed and sealed by the patient or out-patient.

Where Public Trustee is committee at time of admission or receipt of patient or out-patient

(8) Where the Public Trustee is committee of the estate of a patient or out-patient at the time of his admission to or receipt in a psychiatric facility, a certificate of incompetence shall be deemed to have been issued and transmitted to the Public Trustee under subsection 4.

Where subss. 1-8 do not apply R.S.O. 1970, c. 271

(9) Subsections 1 to 8 do not apply to a patient or out-patient whose estate is under committeeship under *The Mental Incompetency Act*.

Where Public Trustee may replace committee appointed under R.S.O. 1970, c. 271

33.—(1) Notwithstanding that under *The Mental Incompetency Act* a person other than the Public Trustee has been appointed as the committee of the estate of a patient or out-patient, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

Duty of Public Trustee where committee appointed under R.S.O. 1970, c. 271

(2) If at any time a committee of the estate of a patient or out-patient is appointed under *The Mental Incompetency Act*, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed the estate of the patient or out-patient that has come into his hands.

Consent of Public Trustee to order

(3) An order shall not be made under *The Mental Incompetency Act* for the appointment of a committee of a patient or out-patient without the consent of the Public Trustee unless seven days notice of the application has been given to him.

Acts of Public Trustee not affected

(4) The acts of the Public Trustee while committee of a patient or out-patient are not rendered invalid by the making of an order appointing another committee.

Where Public Trustee committee

34. The Public Trustee is committee of the estate of a patient or out-patient and shall assume management thereof,

(*a*) upon receipt of a certificate of incompetence;

(*b*) upon receipt of notice under subsection 5 of section 32;

(*c*) upon receipt of an appointment under subsection 6 of section 32; or

(*d*) upon receipt of a notice of continuance under section 37.

Financial statement

35. Upon the Public Trustee becoming committee of the estate of a patient or out-patient, the officer in charge shall forthwith forward a financial statement in the prescribed form to the Public Trustee.

Cancellation of certificate of incompetence

36. The attending physician may, after examining a patient or out-patient for that purpose, cancel the certificate of incompetence issued in respect of the patient or out-patient and the officer in charge shall forward a notice of cancellation in the prescribed form to the Public Trustee.

Examination as to competency before discharge

37.—(1) Where the Public Trustee is managing the estate of a patient or out-patient, the attending physician shall examine the patient or out-patient within twenty-one days before he is discharged from a psychiatric facility to determine whether or not he will be competent to manage his estate.

Notice of continuance

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the patient or out-patient will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the officer in charge shall forward the notice to the Public Trustee.

Where notice of discharge to be transmitted to Public Trustee

(3) The officer in charge shall transmit to the Public Trustee notice of the discharge from the psychiatric facility of a patient or an out-patient in respect of whom a certificate of incompetence is in force.

Where Public Trustee ceases to be committee

38. The Public Trustee ceases to be committee of the estate of a patient or out-patient and shall relinquish management thereof,

(*a*) upon receipt of notice of cancellation of the certificate of incompetence of the patient or out-patient;

(*b*) upon receipt of a revocation in writing, signed and sealed by the patient or out-patient, of an appointment referred to in subsection 6 of section 32;

(*c*) upon receipt of notice of discharge of the patient or out-patient, unless he has at that time received a notice of continuance; or

(*d*) upon the expiration of six months after the discharge of the patient or out-patient, where a notice of continuance was received.

s. 39 (1), re-enacted

12.—(1) Subsection 1 of section 39 of the said Act is repealed and the following substituted therefor:

Application to review board as to competency

(1) Where a certificate of incompetence or a notice of continuance has been issued, the patient or out-patient may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether or not the patient or out-patient is competent to manage his estate.

s. 39 (2), amended

(2) Subsection 2 of the said section 39 is amended by striking out "twelve-month" in the second line and inserting in lieu thereof "six-month".

ss. 41, 42, 45, 46 and 48 to 51, re-enacted

13. Sections 41, 42, 45, 46 and 48 to 51 of the said Act are repealed and the following substituted therefor:

Service of documents

41. Where an action or proceeding is brought or taken against a person,

(*a*) who is a patient or out-patient; and

(*b*) for whose estate a committee has not been appointed by a court,

and the action or proceeding is in connection with the estate of the person, the writ or other document by which the action or proceeding is commenced and any other document requiring personal service,

(*c*) shall be endorsed with the name of the psychiatric facility in or of which the person is a patient or out-patient;

(*d*) shall be served,

(i) on the Public Trustee, and

(ii) on the person, or, where the attending physician is of the opinion that personal service on the person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the officer in charge.

Rights and powers of Public Trustee as committee

42. The Public Trustee as committee of a patient or out-patient has and may exercise all the rights and powers with regard to the estate of the patient or out-patient that the patient or out-patient would have if of full age and of sound and disposing mind.

. . . . . .

SECTION 12. Subsection 1 of section 39 of the Act is amended to refer to both a patient and an out-patient.

Subsection 2 of the section is amended to reduce the waiting time for successive applications from twelve months to six months.

SECTION 13. The sections are re-enacted to provide for both patients and out-patients.

Recitals in documents

45. A recital in a lease, mortgage or conveyance that a person is a patient in or an out-patient of a psychiatric facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

Purposes for which powers of Public Trustee may be exercised

46. The powers conferred upon the Public Trustee as committee of the estate of a patient or out-patient may be exercised,

(*a*) until the committeeship is terminated notwithstanding that the patient or out-patient has been discharged from the psychiatric facility;

(*b*) to carry out and complete any transaction entered into by the patient or out-patient before he became a patient or out-patient in a psychiatric facility;

(*c*) to carry out and complete any transaction entered into by the committee notwithstanding that the committeeship has been terminated or that the patient or out-patient has died after the transaction was commenced.

. . . . . .

When gifts, etc., deemed fraudulent

48. Where the Public Trustee is committee of the estate of a patient or out-patient, every gift, grant, alienation, conveyance or transfer that is not made for full and valuable consideration actually paid or secured or that is made at or after the time when the purchaser of transferee had notice of the mental condition of the patient or out-patient, of the fact that he was a patient or out-patient or of the committeeship shall be deemed to be fraudulent and void as against the Public Trustee.

Death of patient or out-patient

49. Upon the death of a patient or out-patient of whose estate the Public Trustee is committee and until letters probate of the will or letters of administration of the estate of the patient or out-patient are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue.

Passing of accounts

50. The Public Trustee is liable to render an account as to the manner in which he has managed the property of a patient or an out-patient in the same way and subject to the

same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct.

Compensation of Public Trustee

51. The Public Trustee may be allowed compensation for services rendered as committee of the estate of a patient or out-patient in an amount not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation.

s. 52 (2), re-enacted

14. Subsection 2 of section 52 of the said Act is repealed and the following substituted therefor:

Application for continuance of committeeship

(2) Where the Supreme Court is satisfied, on application by the Public Trustee with notice to the person, that a person who was discharged as a patient or out-patient subject to a notice of continuance will continue to be incompetent to manage his estate after the expiry of the notice of continuance, the court by order may extend the committeeship of the Public Trustee for such period of time, or may make such other order, as the court considers proper.

Further orders

(3) Where the Public Trustee continues to manage an estate under subsection 1 or 2, the Supreme Court, upon application, may make such further order as it considers just and, in its discretion, may order that the management of the estate by the Public Trustee be relinquished.

ss. 53-55, re-enacted

15. Sections 53 to 55 of the said Act are repealed and the following substituted therefor:

Payments out of patient's or out-patient's moneys

53. The Public Trustee, out of the moneys in his hands belonging to a person who is a patient or out-patient of whose estate the Public Trustee is committee, shall pay the proper charges for maintenance of the person as a patient in or an out-patient of the psychiatric facility and the Public Trustee may also pay such sums as he considers advisable to the patient's or out-patient's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the patient or out-patient.

Payments out of moneys in court

54. Moneys in court to the credit of a patient or out-patient of whose estate the Public Trustee is committee

SECTION 14. New subsection 2 of section 52 of the Act provides for extending the committeeship of a person's estate by the Public Trustee where the Supreme Court is satisfied that the person will continue to be incompetent to manage his estate.

The present subsection 2 of section 52 is re-enacted as subsection 3 and now refers to subsection 1 or 2.

SECTION 15. The sections are re-enacted to provide for both patients and out-patients.

SECTION 16. The subsection is re-enacted to refer to both a patient and an out-patient.

SECTION 17. The section is re-enacted to change the fine from "not less than $25 and not more than $500" to not more than $10,000.

shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of a court or a judge for such purpose.

55. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a patient or out-patient of whose estate the Public Trustee is committee or to intervene in respect of the estate or any part thereof or to take charge of any property of the patient or out-patient. What Public Trustee not required to do

16. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor: s. 56 (1), re-enacted

(1) Where a person who is suffering from a mental disorder is a patient in or an out-patient of a psychiatric facility in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of the person in the other province or territory to be committee of the estate in Ontario. Patients or out-patients in another province with estate in Ontario

17. Section 60 of the said Act is repealed and the following substituted therefor: s. 60, re-enacted

60. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than $10,000. Offence

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

19. The short title of this Act is *The Mental Health Amendment Act, 1978*. Short title

An Act to amend
The Mental Health Act

1st Reading

March 2nd, 1978

2nd Reading

3rd Reading

THE HON. D. R. TIMBRELL
Minister of Health

(*Government Bill*)

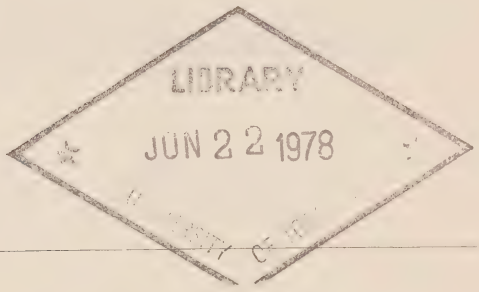
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BILL 19 Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Mental Health Act



THE HON. D. R. TIMBRELL
Minister of Health

(Reprinted as amended by the Social Development Committee)

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Explanatory Notes

Section 1. The definitions are complementary to the amendments that follow in the Bill.

BILL 19 **1978**

An Act to amend The Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mental Health Act*, being chapter 269 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses: s. 1, amended

(*ca*) "involuntary patient" means a person who is detained in a psychiatric facility under a certificate of involuntary admission or a certificate of renewal;

. . . . .

(*fa*) "mentally competent" means having the ability to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent;

. . . . .

(*ga*) "nearest relative" means,

(i) the spouse who is of any age and mentally competent, or

(ii) if none or if the spouse is not available, any one of the children who has attained the age of majority and is mentally competent, or

(iii) if none or if none is available, either of the parents who is mentally competent or the guardian, or

(iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or

(v) if none or if none is available, any other of the next of kin who has attained the age of majority and is mentally competent;

(*ha*) "out-patient" means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;

. . . . . .

(*ja*) "prescribed" means prescribed by the regulations.

. . . . . .

(*la*) "regional review board" means the review board appointed under section 27 having jurisdiction in respect of the psychiatric facility in which the person in respect of whom a hearing is required is a patient;

. . . . . .

(*ma*) "restrain" means keep under control by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the patient.

s.1*a*, enacted

2. The said Act is amended by adding thereto the following section:

Effect of Act on rights and privileges

1*a*. Nothing in this Act shall be deemed to affect the rights or privileges of any person except as specifically set out in this Act.

s. 8, re-enacted

3. Section 8 of the said Act is repealed and the following substituted therefor:

Application for psychiatric assessment

8.—(1) Where a physician examines a person and has reasonable cause to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,



SECTION 2. Self explanatory.



SECTION 3. Section 8 of the Act is re-enacted to reframe the grounds for admission from "mental disorder of a nature or degree so as to require hospitalization in the interests of his own safety or the safety of others" to "mental disorder of a nature or quality that likely will result in bodily harm to the person or another person or imminent and serious physical impairment of the person".

Also, the authority to convey a person to a psychiatric facility is now set out as the authority to take in custody to a psychiatric facility forthwith, and the authority of the psychiatric facility is now to detain the person and to restrain, observe and examine him in the facility for not more than 120 hours.

and if in addition the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

Contents of application

(2) An application under subsection 1 shall set out clearly that the physician who signs the application personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person.

Idem

(3) A physician who signs an application under subsection 1,

(*a*) shall set out in the application the facts upon which he formed his opinion as to the nature and quality of the mental disorder;

(*b*) shall distinguish in the application between the facts observed by him and the facts communicated to him by others; and

(*c*) shall note in the application the date on which he examined the person who is the subject of the application.

Signing of application

(4) An application under subsection 1 is not effective unless it is signed by the physician within seven days after he examined the person who is the subject of the examination.

Authority of application

(5) An application under subsection 1 is sufficient authority for seven days from and including the day on which it is signed by the physician,

(*a*) to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith; and

(*b*) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in the facility for not more than 120 hours.

s. 9 (1), re-enacted

4.—(1) Subsection 1 of section 9 of the said Act is repealed and the following substituted therefor:

Justice of the peace's order for psychiatric assessment

(1) Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and in addition based upon the information before him the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the justice of the peace may issue his order in the prescribed form for the assessment of the person by a physician.

s. 9 (2), repealed

(2) Subsection 2 of the said section 9 is repealed.

s. 9 (4), re-enacted

(3) Subsection 4 of the said section 9 is repealed and the following substituted therefor:

Authority of order

(4) An order under this section shall direct, and, for a period not to exceed seven days from and including the day that it is made, is sufficient authority for any constable or other peace officer to whom it is addressed to take the person named or described therein in custody forthwith to an appropriate place where he may be detained for assessment by a physician.

ss. 10, 11, 12, re-enacted

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Action by peace officer

10. Where a constable or other peace officer observes a person who acts in a manner that in a normal person would

SECTION 4.—Subsection 1. Section 9 of the Act is amended so that the grounds for an order by a justice of the peace will be the same as the grounds for an application by a physician under section 8.

Subsection 2. Subsection 1 of section 9 provides that the justice of the peace may make an order for an assessment by a physician where, upon the information before him, he is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in the consequences set out in clauses *d*, *e* and *f* of subsection 1.



Subsection 3. Subsection 4 of section 9 of the Act is re-enacted to provide for an assessment by a physician rather than a medical examination and to provide that the order of a justice of the peace under the section is valid for a period not to exceed seven days and that the person is to be taken forthwith to an appropriate place for the assessment.



SECTION 5. Section 10 of the Act is re-enacted so that the grounds for action by a constable or other peace officer, in addition to observing conduct that in a normal person would be disorderly, will be similar to that for an order by a justice of the peace under section 9 or an application by a physician under section 8.

The re-enactment of section 11 is complementary to the changes to sections 8, 9 and 10.

Section 12 is re-enacted to provide for the procedure by which an informal patient may become an involuntary patient.

SECTION 6.—Subsection 1. Subsections 1 to 3 of section 13 of the Act are re-enacted as subsections 1 to 3*b* to clarify the procedure to be followed where a person is detained for an assessment by a physician and to reduce the time periods under certificates of renewal.

be disorderly and has reasonable cause to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and in addition the constable or other peace officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

and that it would be dangerous to proceed under section 9, the constable or other peace officer may take the person in custody to an appropriate place for assessment by a physician.

Place of psychiatric assessment

11. An assessment under section 9 or 10 shall be conducted by a physician forthwith after receipt of the person at the place of assessment and where practicable the place shall be a psychiatric facility or other health facility.

Change from informal patient to involuntary patient

12. Subject to subsection 3*b* of section 13, the attending physician may change the status of an informal patient to that of an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

s. 13 (1-3), re-enacted

6.—(1) Subsections 1 to 3 of section 13 of the said Act are repealed and the following substituted therefor:

Duty of attending physician

(1) The attending physician, after observing and examining a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25,

(*a*) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;

(*b*) shall admit the person as an informal patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal patient; or

(*c*) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion both that the person is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal patient.

Physician who completes certificate of involuntary admission

(2) The physician who completes a certificate of involuntary admission pursuant to clause *c* of subsection 1 shall not be the same physician who completed the application for psychiatric assessment pursuant to section 8.

Release of person by officer in charge

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25 upon the completion of 120 hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal patient or has admitted the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

Authority of certificate

(3*a*) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(*a*) for not more than two weeks under a certificate of involuntary admission; and

(*b*) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and



Subsection 2. Subsection 6 is added to section 13 of the Act to require the officer in charge or his delegate to review the certification documents following the completion and filing of a certificate of involuntary admission or a certificate of renewal.



SECTION 7. The subsection is amended to provide for taking a person who is absent without leave to the nearest psychiatric facility.

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician.

Conditions precedent to making of certificate of involuntary admission or certificate of renewal

(3*b*) The attending physician shall not complete a certificate of involuntary admission or a certificate of renewal unless, after he has examined the patient, he is of the opinion both,

(*a*) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(*b*) that the patient is not suitable for admission or continuation as an informal patient.

s. 13, amended

(2) The said section 13 is amended by adding thereto the following subsection:

Examination of certificate by officer in charge

(6) Forthwith following completion and filing of a certificate of involuntary admission or of a certificate of renewal, the officer in charge or his delegate, shall review the certification documents to ascertain whether or not they have been completed in compliance with the criteria outlined in this Act and where, in his opinion, the documents are not properly completed, the officer in charge shall so inform the attending physician and, unless the person is re-examined and released or admitted in accordance with subsections 1 and 2, the officer in charge shall release the person.

s. 21 (1), amended

7. Subsection 1 of section 21 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

Unauthorized absence

(1) Where a person who is subject to detention is absent without leave from a psychiatric facility, a constable or other peace officer or any one appointed by the officer in charge may return the person to the psychiatric facility or take the

person to the psychiatric facility nearest to the place where the person is apprehended,

. . . . .

s. 25, re-enacted

8. Section 25 of the said Act is repealed and the following substituted therefor:

Mentally disordered person coming into Ontario

25. Where the Minister has reasonable cause to believe that there may come or be brought into Ontario a person suffering from mental disorder of a nature or quality that likely will result in,

(*a*) serious bodily harm to the person; or

(*b*) serious bodily harm to another person,

unless the person is placed in the custody of a psychiatric facility, the Minister by an order in the prescribed form may authorize any one to take the person in custody to a psychiatric facility and the order is authority to admit, detain, restrain, observe and examine the person in the psychiatric facility.

s. 25*a*, enacted

9. The said Act is amended by adding thereto the following section:

Duty of constable, other peace officer or other person

25*a*. A constable or other peace officer or any one who takes a person in custody to a psychiatric facility shall remain at the facility and retain custody of the person so taken until the facility accepts the custody of the person.

s. 26*a*, enacted

10. The said Act is further amended by adding thereto the following section:

Interpretation

26*a*.—(1) In this section,

(*a*) "clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;

(*b*) "patient" includes former patient, out-patient, and former out-patient.

Disclosure of clinical record

(2) Except as provided in subsections 3 and 5, no person shall disclose, transmit or examine a clinical record.

Idem

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge

SECTION 8. The re-enactment of the section is complementary to the re-enactment of section 8 of the Act.

SECTION 9. The section prevents simple delivery of a person to a psychiatric facility by requiring the constable, other peace officer or other person to remain and to retain custody until the facility accepts custody.

SECTION 10. New section 26*a* of the Act relates to the disclosure of information from or the disclosure, transmittal or examination of the clinical record of a patient.

Subsections 6 and 7 relate to the disclosure of material from the clinical record pursuant to a subpoena, order, direction, notice or similar requirement. Subsection 8 provides for the return of material to the officer in charge of the psychiatric facility. Subsection 9 relates to the disclosure, in an action or proceeding in any court or before any body, of information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient.

may disclose or transmit the clinical record to or permit the examination of the clinical record by,

(*a*) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;

(*c*) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or treating or assisting in assessing or treating the patient;

(*d*) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;

(*e*) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;

(*f*) a person for the purpose of research, academic pursuits or the compilation of statistical data.

Use of material in clinical record for research, study or statistics

(4) Where a clinical record,

(*a*) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and

(*b*) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.

Disclosure pursuant to subpoena

(5) Subject to subsections 6 and 7, the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act.

Statement by attending physician

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

(*a*) is likely to result in harm to the treatment or recovery of the patient; or

(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician except under an order of,

(*c*) the court before which the matter is or may be in issue; or

(*d*) where the disclosure, transmittal or examination is not required by a court, under an order of the Divisional Court,

made after a hearing from which the public is excluded and that is held on notice to the attending physician.

Matters to be considered by court or body

(7) On a hearing under subsection 6, the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

(*a*) is likely to result in harm to the treatment or recovery of the patient; or



SECTION 11. New sections 28 to 30*f* of the Act provide a revised procedure for a hearing and an appeal in respect of the involuntary admission or the renewal of the involuntary status of a patient.



(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely, the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of clinical record to officer in charge

(8) Where a clinical record is required pursuant to subsection 5 or 6, the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.



Disclosure in action or proceeding

(9) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

(*a*) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or

(*c*) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or (where the patient has not attained the age of majority or is not mentally competent) the nearest relative of the patient, that the disclosure is essential in the interests of justice.

11. Sections 28, 29 and 30 of the said Act are repealed and the following substituted therefor: ss. 28-30, re-enacted

Notice of certificate to be given or transmitted to patient

28.—(1) An attending physician who completes a certificate of involuntary admission or a certificate of renewal shall give or transmit a notice in writing of completion and filing of the certificate to the patient who is the subject of the certificate and to the area director for the area, in accordance with *The Legal Aid Act*, in which the psychiatric facility is located.

R.S.O. 1970, c. 239

Notice

(2) A notice under subsection 1 shall inform the patient and the area director that the patient or any person on his behalf is entitled to a hearing by the regional review board if the patient or the person gives or transmits to the officer in charge or to the regional review board notice in writing requiring a hearing and the patient or the person may so require such a hearing.

Application for review by patient, etc.

(3) An involuntary patient, or any person on his behalf, may apply in the prescribed form to the chairman of the regional review board having jurisdiction to inquire into whether the patient is suffering from mental disorder of a nature or quality that likely will result in,

(*a*) serious bodily harm to the patient;

(*b*) serious bodily harm to another person; or

(*c*) imminent and serious physical impairment of the patient,

unless the patient remains an involuntary patient in the custody of a psychiatric facility.

When application may be made

(4) An application under subsection 1 may be made,

(*a*) when a certificate of involuntary admission respecting the patient comes into force;

(*b*) when any certificate of renewal respecting the patient comes into force; or

(*c*) when the patient, after having been admitted to a psychiatric facility, is subsequently continued as an involuntary patient.

Application for review by Minister, etc.

(5) An application under subsection 1 may be made at any time by the Minister, the Deputy Minister or the officer in charge in respect of any involuntary patient.

Where notice deemed to have been given

(6) On the completion of a fourth certificate of renewal and on the completion of every fourth certificate of renewal

thereafter, the patient shall be deemed to have applied in the prescribed form pursuant to subsection 3 to the chairman of the regional review board having jurisdiction.

Effective of certificate

29. Notwithstanding that a hearing is required or an appeal is taken against a certificate of involuntary admission or a certificate of renewal, the certificate is effective until confirmed or rescinded on a hearing or appeal.

Parties

30. The attending physician, the patient or other person who has required the hearing and such other persons as the regional review board may specify are parties to the proceedings before the board.

Transmittal of notice by officer in charge

30*a*. Where a patient or other person gives or transmits to the officer in charge a notice in writing pursuant to subsection 2 of section 28, the officer in charge shall transmit the requirement to the regional review board.

Appointment of time and place for hearing

30*b*. A regional review board that received notice in writing requiring a hearing under subsection 2 of section 28 or under section 30*a* shall appoint a time and place for and hold the hearing.

Powers of board

30*c*. Within seven days from the day that a regional review board completes a hearing under section 30*b*, the board by an order in writing shall confirm or revoke the certificate of involuntary admission or the certificate of renewal and for the purpose the board may substitute its opinion for that of the attending physician.

Examination of documentary evidence

30*d*.—(1) A party to a proceeding shall be afforded an opportunity to examine and to copy, before the hearing, any written or documentary evidence that will be produced or any report, the contents of which will be produced or any report, the contents of which will be given in evidence at the hearing.

Party may examine clinical record

(2) Subject to section 26*a*, a party to a proceeding or the counsel or agent representing the party, or both, is entitled to examine and to copy any clinical record prepared in respect of the patient.

Members holding hearing not to have taken part in investigation, etc.

30*e*.—(1) Members of a regional review board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except under notice to and opportunity for all parties to participate, but the

regional review board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Only members at hearing to participate in decision

(2) No member of a regional review board shall participate in a decision of a regional review board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of a regional review board shall be given unless all members so present participate in the decision.

Findings of fact

(3) The findings of fact of a regional review board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Release of documentary evidence

(4) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the regional review board within a reasonable time after the matter in issue has been finally determined.

Appeal to court

30*f*.—(1) A party to proceedings before a regional review board may appeal from its decision in accordance with the rules of court to the county or district court of the county or district in which is located the psychiatric facility where the patient is detained.

Record to be filed in court

(2) Where a party appeals from a decision or order of a regional review board, the regional review board shall forthwith file in the county or district court the record of the proceedings before it in which the decision was made, which shall constitute the record in the appeal.

Appeal on law or facts

(3) An appeal under this section may be made on questions of law or fact or both.

Power of court

(4) On an appeal under this section, the court may exercise all the powers of the regional review board.

Idem

(5) For the purpose of subsection 4, the court may substitute its opinion for that of the attending physician or of the regional review board.

Idem

(6) On an appeal under this section, the court may refer the matter back to the regional review board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.



SECTION 12. New section 31*a* of the Act relates to consent to treatment of an involuntary patient. Psychosurgery, as defined in the section, is not permitted in the case of an involuntary patient. Where an involuntary patient, or the nearest relative of an involuntary patient who has not reached the age of majority or is not mentally competent, refuses consent to treatment the attending physician may apply to a regional review board for an order authorizing the treatment. A regional review board is required to hold a hearing and to base its decision on the criteria set out in subsection 5 of the section.



12. The said Act is further amended by adding thereto the following section:

Interpretation

31*a*.—(1) In this section, "psychosurgery" means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Consent to treatment

(2) Psychiatric treatment shall not be given to an involuntary patient without the consent of the patient or, where the patient has not reached the age of majority or is not mentally competent, the consent of the nearest relative of the patient except under the authority of an order of a regional review board made on the application of the officer in charge.

Consent to psychosurgery

(3) The consent of an involuntary patient or the nearest relative of an involuntary patient to treatment while an involuntary patient does not include and shall not be deemed to include psychosurgery.

Application to regional review board

(4) Where,

(*a*) an involuntary patient or the nearest relative of an involuntary patient, as the case requires, refuses consent or an involuntary patient is not mentally competent and there is no relative of the patient from whom consent may be requested to the provision of a specific psychiatric treatment or a specific course of psychiatric treatment to the patient; and

(*b*) the attending physician, a psychiatrist who is a member and a psychiatrist who is not a member of the medical staff of the psychiatric facility in which the patient is detained each state in the prescribed form;

(i) that he has examined the patient,

(ii) that he is of the opinion that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or the specific course of psychiatric treatment, and

(iii) that the mental condition of the patient will not or is not likely to improve without the specific treatment or course of treatment,

the attending physician on notice to the patient or the nearest relative, as the case requires, may apply to the regional review board for an order authorizing the providing of the treatment or course of treatment to the patient.

Hearing

(5) Where the attending physician applies for a hearing under subsection 4, the regional review board shall appoint a time for and hold the hearing and shall issue its decision within seven days after the completion of the hearing and, where the board is satisfied,

(*a*) that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or course of treatment for the providing of which authority is sought; and

(*b*) that the mental condition of the patient will not or is not likely to improve without the specific psychiatric treatment or course of treatment,

the board by order may authorize the providing of the psychiatric treatment or course of treatment specified in the application, but the board shall not authorize and no order of the board is or shall be deemed to be authority to perform psychosurgery.

Parties

(6) The attending physician and the patient or, where the patient is not mentally competent, the nearest relative or, if none, the Official Guardian and such other persons as the regional review board may specify are parties to the proceedings before the board.

ss. 32-38, re-enacted

13. Sections 32 to 38 of the said Act are repealed and the following substituted therefor:

Examination as to competency to manage estate, upon admission

32.—(1) Forthwith upon the admission of a patient to a psychiatric facility, a physician shall examine the patient to determine whether or not he is competent to manage his estate.

Idem

(2) The attending physician may examine a patient and a physician may examine an out-patient at any time to determine whether or not the patient or out-patient is competent to manage his estate.

Entry of determination and reasons in clinical record

(3) After an examination under subsection 1 or 2, the physician or attending physician, as the case may be, shall

SECTION 13. The sections are re-enacted to provide for both patients and out-patients.

Subsection 3 is added to section 32 of the Act to require the physician or attending physician to enter his determination as to competency in the clinical record together with written reasons.

Subsection 4 of section 32 provides for the issuing of a certificate of incompetence to manage his estate in respect of a patient or an out-patient.

Subsection 1 of section 37 provides for an examination within twenty-one days of the discharge of a patient or out-patient and for the issuing of a notice of continuance where the physician is of the opinion, after the examination, that the patient or out-patient will not be competent to manage his estate.

In addition, section 37 of the Act is amended to require the officer in charge to give notice to the Public Trustee of the discharge of a patient in respect of whom a certificate of incompetence is in force.

enter his determination, together with written reasons therefor, in the clinical record prepared in respect of the patient.

Certificate of incompetence

(4) A physician or attending physician who performs an examination under subsection 1 or 2 and who is of the opinion that the patient or out-patient is not competent to manage his estate shall issue a certificate of incompetence in the prescribed form and the officer in charge shall transmit the certificate to the Public Trustee.

Idem, exceptional circumstances

(5) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the officer in charge or, where the officer in charge is not present in the psychiatric facility, the physician or attending physician shall notify the Public Trustee in the fastest manner possible that a certificate of incompetence has been issued.

Appointment by patient

(6) A patient or out-patient may appoint the Public Trustee as committee of the estate of the patient or out-patient.

Idem

(7) An appointment under subsection 6,

(*a*) is not valid unless it is signed and sealed by the patient or out-patient; and

(*b*) may be revoked by a written revocation signed and sealed by the patient or out-patient.

Where Public Trustee is committee at time of admission or receipt of patient or out-patient

(8) Where the Public Trustee is committee of the estate of a patient or out-patient at the time of his admission to or receipt in a psychiatric facility, a certificate of incompetence shall be deemed to have been issued and transmitted to the Public Trustee under subsection 4.

Where subss. 1-8 do not apply R.S.O. 1970, c. 271

(9) Subsections 1 to 8 do not apply to a patient or out-patient whose estate is under committeeship under *The Mental Incompetency Act*.

Where Public Trustee may replace committee appointed under R.S.O. 1970, c. 271

33.—(1) Notwithstanding that under *The Mental Incompetency Act* a person other than the Public Trustee has been appointed as the committee of the estate of a patient or out-patient, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

Duty of Public Trustee where committee appointed under R.S.O. 1970, c. 271

(2) If at any time a committee of the estate of a patient or out-patient is appointed under *The Mental Incompetency Act*, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed

the estate of the patient or out-patient that has come into his hands.

Consent of Public Trustee to order

(3) An order shall not be made under *The Mental Incompetency Act* for the appointment of a committee of a patient or out-patient without the consent of the Public Trustee unless seven days notice of the application has been given to him.

Acts of Public Trustee not affected

(4) The acts of the Public Trustee while committee of a patient or out-patient are not rendered invalid by the making of an order appointing another committee.

Where Public Trustee committee

34. The Public Trustee is committee of the estate of a patient or out-patient and shall assume management thereof,

(*a*) upon receipt of a certificate of incompetence;

(*b*) upon receipt of notice under subsection 5 of section 32;

(*c*) upon receipt of an appointment under subsection 6 of section 32; or

(*d*) upon receipt of a notice of continuance under section 37.

Financial statement

35. Upon the Public Trustee becoming committee of the estate of a patient or out-patient, the officer in charge shall forthwith forward a financial statement in the prescribed form to the Public Trustee.

Cancellation of certificate of incompetence

36. The attending physician may, after examining a patient or out-patient for that purpose, cancel the certificate of incompetence issued in respect of the patient or out-patient and the officer in charge shall forward a notice of cancellation in the prescribed form to the Public Trustee.

Examination as to competency before discharge

37.—(1) Where the Public Trustee is managing the estate of a patient or out-patient, the attending physician shall examine the patient or out-patient within twenty-one days before he is discharged from a psychiatric facility to determine whether or not he will be competent to manage his estate.

Notice of continuance

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the patient or out-patient will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the officer in charge shall forward the notice to the Public Trustee.

SECTION 14. Subsection 1 of section 39 of the Act is amended to refer to both a patient and an out-patient.

Subsection 2 of the section is amended to reduce the waiting time for successive applications from twelve months to six months.

SECTION 15. The sections are re-enacted to provide for both patients and out-patients.

(3) The officer in charge shall transmit to the Public Trustee notice of the discharge from the psychiatric facility of a patient or an out-patient in respect of whom a certificate of incompetence is in force. Where notice of discharge to be transmitted to Public Trustee

38. The Public Trustee ceases to be committee of the estate of a patient or out-patient and shall relinquish management thereof, Where Public Trustee ceases to be committee

(*a*) upon receipt of notice of cancellation of the certificate of incompetence of the patient or out-patient;

(*b*) upon receipt of a revocation in writing, signed and sealed by the patient or out-patient, of an appointment referred to in subsection 6 of section 32;

(*c*) upon receipt of notice of discharge of the patient or out-patient, unless he has at that time received a notice of continuance; or

(*d*) upon the expiration of six months after the discharge of the patient or out-patient, where a notice of continuance was received.

14.—(1) Subsection 1 of section 39 of the said Act is repealed and the following substituted therefor: s. 39 (1), re-enacted

(1) Where a certificate of incompetence or a notice of continuance has been issued, the patient or out-patient may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether or not the patient or out-patient is competent to manage his estate. Application to review board as to competency

(2) Subsection 2 of the said section 39 is amended by striking out "twelve-month" in the second line and inserting in lieu thereof "six-month". s. 39 (2), amended

15. Sections 41, 42, 45, 46 and 48 to 51 of the said Act are repealed and the following substituted therefor: ss. 41, 42, 45, 46 and 48 to 51, re-enacted

41. Where an action or proceeding is brought or taken against a person, Service of documents

(*a*) who is a patient or out-patient; and

(*b*) for whose estate a committee has not been appointed by a court,

and the action or proceeding is in connection with the estate of the person, the writ or other document by which

the action or proceeding is commenced and any other document requiring personal service,

(*c*) shall be endorsed with the name of the psychiatric facility in or of which the person is a patient or out-patient;

(*d*) shall be served,

(i) on the Public Trustee, and

(ii) on the person, or, where the attending physician is of the opinion that personal service on the person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the officer in charge.

Rights and powers of Public Trustee as committee

42. The Public Trustee as committee of a patient or out-patient has and may exercise all the rights and powers with regard to the estate of the patient or out-patient that the patient or out-patient would have if of full age and of sound and disposing mind.

. . . . .

Recitals in documents

45. A recital in a lease, mortgage or conveyance that a person is a patient in or an out-patient of a psychiatric facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

Purposes for which powers of Public Trustee may be exercised

46. The powers conferred upon the Public Trustee as committee of the estate of a patient or out-patient may be exercised,

(*a*) until the committeeship is terminated notwithstanding that the patient or out-patient has been discharged from the psychiatric facility;

(*b*) to carry out and complete any transaction entered into by the patient or out-patient before he became a patient or out-patient in a psychiatric facility;

(*c*) to carry out and complete any transaction entered into by the committee notwithstanding that the committeeship has been terminated or that the patient or out-patient has died after the transaction was commenced.

. . . . .

SECTION 16. New subsection 2 of section 52 of the Act provides for extending the committeeship of a person's estate by the Public Trustee where the Supreme Court is satisfied that the person will continue to be incompetent to manage his estate.

The present subsection 2 of section 52 is re-enacted as subsection 3 and now refers to subsection 1 or 2.

48. Where the Public Trustee is committee of the estate of a patient or out-patient, every gift, grant, alienation, conveyance or transfer that is not made for full and valuable consideration actually paid or secured or that is made at or after the time when the purchaser of transferee had notice of the mental condition of the patient or out-patient, of the fact that he was a patient or out-patient or of the committeeship shall be deemed to be fraudulent and void as against the Public Trustee. When gifts, etc., deemed fraudulent

49. Upon the death of a patient or out-patient of whose estate the Public Trustee is committee and until letters probate of the will or letters of administration of the estate of the patient or out-patient are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue. Death of patient or out-patient

50. The Public Trustee is liable to render an account as to the manner in which he has managed the property of a patient or an out-patient in the same way and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct. Passing of accounts

51. The Public Trustee may be allowed compensation for services rendered as committee of the estate of a patient or out-patient in an amount not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation. Compensation of Public Trustee

16. Subsection 2 of section 52 of the said Act is repealed and the following substituted therefor: s. 52 (2), re-enacted

(2) Where the Supreme Court is satisfied, on application by the Public Trustee with notice to the person, that a person who was discharged as a patient or out-patient subject to a notice of continuance will continue to be incompetent to manage his estate after the expiry of the notice of continuance, the court by order may extend the committeeship of the Public Trustee for such period of time, or may make such other order, as the court considers proper. Application for continuance of committeeship

Further orders

(3) Where the Public Trustee continues to manage an estate under subsection 1 or 2, the Supreme Court, upon application, may make such further order as it considers just and, in its discretion, may order that the management of the estate by the Public Trustee be relinquished.

ss. 53-55, re-enacted

17. Sections 53 to 55 of the said Act are repealed and the following substituted therefor:

Payments out of patient's or out-patient's moneys

53. The Public Trustee, out of the moneys in his hands belonging to a person who is a patient or out-patient of whose estate the Public Trustee is committee, shall pay the proper charges for maintenance of the person as a patient in or an out-patient of the psychiatric facility and the Public Trustee may also pay such sums as he considers advisable to the patient's or out-patient's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the patient or out-patient.

Payments out of moneys in court

54. Moneys in court to the credit of a patient or out-patient of whose estate the Public Trustee is committee shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of a court or a judge for such purpose.

What Public Trustee not required to do

55. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a patient or out-patient of whose estate the Public Trustee is committee or to intervene in respect of the estate or any part thereof or to take charge of any property of the patient or out-patient.

s. 56 (1), re-enacted

18. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:

Patients or out-patients in another province with estate in Ontario

(1) Where a person who is suffering from a mental disorder is a patient in or an out-patient of a psychiatric facility in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of the person in the other province or territory to be committee of the estate in Ontario.

s. 60, re-enacted

19. Section 60 of the said Act is repealed and the following substituted therefor:

SECTION 17. The sections are re-enacted to provide for both patients and out-patients.

SECTION 18. The subsection is re-enacted to refer to both a patient and an out-patient.

SECTION 19. The section is re-enacted to change the fine from "not less than $25 and not more than $500" to not more than $10,000.

60. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than $10,000. Offence

20. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

21. The short title of this Act is *The Mental Health Amendment Act, 1978*. Short title

An Act to amend
The Mental Health Act

1st Reading

March 2nd, 1978

2nd Reading

April 13th, 1978

3rd Reading

THE HON. D. R. TIMBRELL
Minister of Health

(Reprinted as amended by the Social Development Committee)

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2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Mental Health Act

THE HON. D. R. TIMBRELL
Minister of Health

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An Act to amend The Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mental Health Act*, being chapter 269 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses: s. 1, amended

(*ca*) "involuntary patient" means a person who is detained in a psychiatric facility under a certificate of involuntary admission or a certificate of renewal;

. . . . .

(*fa*) "mentally competent" means having the ability to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent;

. . . . .

(*ga*) "nearest relative" means,

(i) the spouse who is of any age and mentally competent, or

(ii) if none or if the spouse is not available, any one of the children who has attained the age of majority and is mentally competent, or

(iii) if none or if none is available, either of the parents who is mentally competent or the guardian, or

(iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or

(v) if none or if none is available, any other of the next of kin who has attained the age of majority and is mentally competent;

(*ha*) "out-patient" means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;

. . . . . .

(*ja*) "prescribed" means prescribed by the regulations.

. . . . . .

(*la*) "regional review board" means the review board appointed under section 27 having jurisdiction in respect of the psychiatric facility in which the person in respect of whom a hearing is required is a patient;

. . . . . .

(*ma*) "restrain" means keep under control by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the patient.

s.1*a*, enacted

2. The said Act is amended by adding thereto the following section:

Effect of Act on rights and privileges

1*a*. Nothing in this Act shall be deemed to affect the rights or privileges of any person except as specifically set out in this Act.

s. 8, re-enacted

3. Section 8 of the said Act is repealed and the following substituted therefor:

Application for psychiatric assessment

8.—(1) Where a physician examines a person and has reasonable cause to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and if in addition the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

Contents of application

(2) An application under subsection 1 shall set out clearly that the physician who signs the application personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person.

Idem

(3) A physician who signs an application under subsection 1,

(*a*) shall set out in the application the facts upon which he formed his opinion as to the nature and quality of the mental disorder;

(*b*) shall distinguish in the application between the facts observed by him and the facts communicated to him by others; and

(*c*) shall note in the application the date on which he examined the person who is the subject of the application.

Signing of application

(4) An application under subsection 1 is not effective unless it is signed by the physician within seven days after he examined the person who is the subject of the examination.

Authority of application

(5) An application under subsection 1 is sufficient authority for seven days from and including the day on which it is signed by the physician,

(*a*) to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith; and

(*b*) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in the facility for not more than 120 hours.

s. 9 (1), re-enacted

4.—(1) Subsection 1 of section 9 of the said Act is repealed and the following substituted therefor:

Justice of the peace's order for psychiatric assessment

(1) Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and in addition based upon the information before him the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

the justice of the peace may issue his order in the prescribed form for the assessment of the person by a physician.

s. 9 (2), repealed

(2) Subsection 2 of the said section 9 is repealed.

s. 9 (4), re-enacted

(3) Subsection 4 of the said section 9 is repealed and the following substituted therefor:

Authority of order

(4) An order under this section shall direct, and, for a period not to exceed seven days from and including the day that it is made, is sufficient authority for any constable or other peace officer to whom it is addressed to take the person named or described therein in custody forthwith to an appropriate place where he may be detained for assessment by a physician.

ss. 10, 11, 12, re-enacted

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Action by peace officer

10. Where a constable or other peace officer observes a person who acts in a manner that in a normal person would

be disorderly and has reasonable cause to believe that the person,

(*a*) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(*b*) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(*c*) has shown or is showing a lack of competence to care for himself,

and in addition the constable or other peace officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(*d*) serious bodily harm to the person;

(*e*) serious bodily harm to another person; or

(*f*) imminent and serious physical impairment of the person,

and that it would be dangerous to proceed under section 9, the constable or other peace officer may take the person in custody to an appropriate place for assessment by a physician.

Place of psychiatric assessment

11. An assessment under section 9 or 10 shall be conducted by a physician forthwith after receipt of the person at the place of assessment and where practicable the place shall be a psychiatric facility or other health facility.

Change from informal patient to involuntary patient

12. Subject to subsection 3*b* of section 13, the attending physician may change the status of an informal patient to that of an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

s. 13 (1-3), re-enacted

6.—(1) Subsections 1 to 3 of section 13 of the said Act are repealed and the following substituted therefor:

Duty of attending physician

(1) The attending physician, after observing and examining a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25,

(*a*) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;

(*b*) shall admit the person as an informal patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal patient; or

(*c*) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion both that the person is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal patient.

Physician who completes certificate of involuntary admission

(2) The physician who completes a certificate of involuntary admission pursuant to clause *c* of subsection 1 shall not be the same physician who completed the application for psychiatric assessment pursuant to section 8.

Release of person by officer in charge

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25 upon the completion of 120 hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal patient or has admitted the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

Authority of certificate

(3*a*) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(*a*) for not more than two weeks under a certificate of involuntary admission; and

(*b*) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician.

Conditions precedent to making of certificate of involuntary admission or certificate of renewal

(3*b*) The attending physician shall not complete a certificate of involuntary admission or a certificate of renewal unless, after he has examined the patient, he is of the opinion both,

(*a*) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(*b*) that the patient is not suitable for admission or continuation as an informal patient.

s. 13, amended

(2) The said section 13 is amended by adding thereto the following subsection:

Examination of certificate by officer in charge

(6) Forthwith following completion and filing of a certificate of involuntary admission or of a certificate of renewal, the officer in charge or his delegate, shall review the certification documents to ascertain whether or not they have been completed in compliance with the criteria outlined in this Act and where, in his opinion, the documents are not properly completed, the officer in charge shall so inform the attending physician and, unless the person is re-examined and released or admitted in accordance with subsections 1 and 2, the officer in charge shall release the person.

s. 21 (1), amended

7. Subsection 1 of section 21 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

Unauthorized absence

(1) Where a person who is subject to detention is absent without leave from a psychiatric facility, a constable or other peace officer or any one appointed by the officer in charge may return the person to the psychiatric facility or take the

person to the psychiatric facility nearest to the place where the person is apprehended,

. . . . .

s. 25, re-enacted

8. Section 25 of the said Act is repealed and the following substituted therefor:

Mentally disordered person coming into Ontario

25. Where the Minister has reasonable cause to believe that there may come or be brought into Ontario a person suffering from mental disorder of a nature or quality that likely will result in,

(*a*) serious bodily harm to the person; or

(*b*) serious bodily harm to another person,

unless the person is placed in the custody of a psychiatric facility, the Minister by an order in the prescribed form may authorize any one to take the person in custody to a psychiatric facility and the order is authority to admit, detain, restrain, observe and examine the person in the psychiatric facility.

s. 25*a*, enacted

9. The said Act is amended by adding thereto the following section:

Duty of constable, other peace officer or other person

25*a*. A constable or other peace officer or any one who takes a person in custody to a psychiatric facility shall remain at the facility and retain custody of the person so taken until the facility accepts the custody of the person.

s. 26*a*, enacted

10. The said Act is further amended by adding thereto the following section:

Interpretation

26*a*.—(1) In this section,

(*a*) "clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;

(*b*) "patient" includes former patient, out-patient, and former out-patient.

Disclosure of clinical record

(2) Except as provided in subsections 3 and 5, no person shall disclose, transmit or examine a clinical record.

Idem

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge

may disclose or transmit the clinical record to or permit the examination of the clinical record by,

(*a*) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;

(*c*) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or treating or assisting in assessing or treating the patient;

(*d*) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;

(*e*) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;

(*f*) a person for the purpose of research, academic pursuits or the compilation of statistical data.

Use of material in clinical record for research, study or statistics

(4) Where a clinical record,

(*a*) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and

(*b*) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.

Disclosure pursuant to subpoena

(5) Subject to subsections 6 and 7, the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act.

Statement by attending physician

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

(*a*) is likely to result in harm to the treatment or recovery of the patient; or

(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician except under an order of,

(*c*) the court before which the matter is or may be in issue; or

(*d*) where the disclosure, transmittal or examination is not required by a court, under an order of the Divisional Court,

made after a hearing from which the public is excluded and that is held on notice to the attending physician.

Matters to be considered by court or body

(7) On a hearing under subsection 6, the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

(*a*) is likely to result in harm to the treatment or recovery of the patient; or

(*b*) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely, the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of clinical record to officer in charge

(8) Where a clinical record is required pursuant to subsection 5 or 6, the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.

Disclosure in action or proceeding

(9) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

(*a*) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;

(*b*) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or

(*c*) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or (where the patient has not attained the age of majority or is not mentally competent) the nearest relative of the patient, that the disclosure is essential in the interests of justice.

11. Sections 28, 29 and 30 of the said Act are repealed and the following substituted therefor: ss. 28-30, re-enacted

Notice of certificate to be given or transmitted to patient

28.—(1) An attending physician who completes a certificate of involuntary admission or a certificate of renewal shall give or transmit a notice in writing of completion and filing of the certificate to the patient who is the subject of the certificate and to the area director for the area, in accordance with *The Legal Aid Act*, in which the psychiatric facility is located.

R.S.O. 1970, c. 239

Notice

(2) A notice under subsection 1 shall inform the patient and the area director that the patient or any person on his behalf is entitled to a hearing by the regional review board if the patient or the person gives or transmits to the officer in charge or to the regional review board notice in writing requiring a hearing and the patient or the person may so require such a hearing.

Application for review by patient, etc.

(3) An involuntary patient, or any person on his behalf, may apply in the prescribed form to the chairman of the regional review board having jurisdiction to inquire into whether the patient is suffering from mental disorder of a nature or quality that likely will result in,

(*a*) serious bodily harm to the patient;

(*b*) serious bodily harm to another person; or

(*c*) imminent and serious physical impairment of the patient,

unless the patient remains an involuntary patient in the custody of a psychiatric facility.

When application may be made

(4) An application under subsection 1 may be made,

(*a*) when a certificate of involuntary admission respecting the patient comes into force;

(*b*) when any certificate of renewal respecting the patient comes into force; or

(*c*) when the patient, after having been admitted to a psychiatric facility, is subsequently continued as an involuntary patient.

Application for review by Minister, etc.

(5) An application under subsection 1 may be made at any time by the Minister, the Deputy Minister or the officer in charge in respect of any involuntary patient.

Where notice deemed to have been given

(6) On the completion of a fourth certificate of renewal and on the completion of every fourth certificate of renewal

thereafter, the patient shall be deemed to have applied in the prescribed form pursuant to subsection 3 to the chairman of the regional review board having jurisdiction.

Effective of certificate

29. Notwithstanding that a hearing is required or an appeal is taken against a certificate of involuntary admission or a certificate of renewal, the certificate is effective until confirmed or rescinded on a hearing or appeal.

Parties

30. The attending physician, the patient or other person who has required the hearing and such other persons as the regional review board may specify are parties to the proceedings before the board.

Transmittal of notice by officer in charge

30*a*. Where a patient or other person gives or transmits to the officer in charge a notice in writing pursuant to subsection 2 of section 28, the officer in charge shall transmit the requirement to the regional review board.

Appointment of time and place for hearing

30*b*. A regional review board that received notice in writing requiring a hearing under subsection 2 of section 28 or under section 30*a* shall appoint a time and place for and hold the hearing.

Powers of board

30*c*. Within seven days from the day that a regional review board completes a hearing under section 30*b*, the board by an order in writing shall confirm or revoke the certificate of involuntary admission or the certificate of renewal and for the purpose the board may substitute its opinion for that of the attending physician.

Examination of documentary evidence

30*d*.—(1) A party to a proceeding shall be afforded an opportunity to examine and to copy, before the hearing, any written or documentary evidence that will be produced or any report, the contents of which will be produced or any report, the contents of which will be given in evidence at the hearing.

Party may examine clinical record

(2) Subject to section 26*a*, a party to a proceeding or the counsel or agent representing the party, or both, is entitled to examine and to copy any clinical record prepared in respect of the patient.

Members holding hearing not to have taken part in investigation, etc.

30*e*.—(1) Members of a regional review board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except under notice to and opportunity for all parties to participate, but the

regional review board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Only members at hearing to participate in decision

(2) No member of a regional review board shall participate in a decision of a regional review board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of a regional review board shall be given unless all members so present participate in the decision.

Findings of fact

(3) The findings of fact of a regional review board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Release of documentary evidence

(4) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the regional review board within a reasonable time after the matter in issue has been finally determined.

Appeal to court

30*f*.—(1) A party to proceedings before a regional review board may appeal from its decision in accordance with the rules of court to the county or district court of the county or district in which is located the psychiatric facility where the patient is detained.

Record to be filed in court

(2) Where a party appeals from a decision or order of a regional review board, the regional review board shall forthwith file in the county or district court the record of the proceedings before it in which the decision was made, which shall constitute the record in the appeal.

Appeal on law or facts

(3) An appeal under this section may be made on questions of law or fact or both.

Power of court

(4) On an appeal under this section, the court may exercise all the powers of the regional review board.

Idem

(5) For the purpose of subsection 4, the court may substitute its opinion for that of the attending physician or of the regional review board.

Idem

(6) On an appeal under this section, the court may refer the matter back to the regional review board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

12. The said Act is further amended by adding thereto the following section:

Interpretation

31*a*.—(1) In this section, "psychosurgery" means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Consent to treatment

(2) Psychiatric treatment shall not be given to an involuntary patient without the consent of the patient or, where the patient has not reached the age of majority or is not mentally competent, the consent of the nearest relative of the patient except under the authority of an order of a regional review board made on the application of the officer in charge.

Consent to psychosurgery

(3) The consent of an involuntary patient or the nearest relative of an involuntary patient to treatment while an involuntary patient does not include and shall not be deemed to include psychosurgery.

Application to regional review board

(4) Where,

(*a*) an involuntary patient or the nearest relative of an involuntary patient, as the case requires, refuses consent or an involuntary patient is not mentally competent and there is no relative of the patient from whom consent may be requested to the provision of a specific psychiatric treatment or a specific course of psychiatric treatment to the patient; and

(*b*) the attending physician, a psychiatrist who is a member and a psychiatrist who is not a member of the medical staff of the psychiatric facility in which the patient is detained each state in the prescribed form;

(i) that he has examined the patient,

(ii) that he is of the opinion that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or the specific course of psychiatric treatment, and

(iii) that the mental condition of the patient will not or is not likely to improve without the specific treatment or course of treatment,

the attending physician on notice to the patient or the nearest relative, as the case requires, may apply to the regional review board for an order authorizing the providing of the treatment or course of treatment to the patient.

Hearing

(5) Where the attending physician applies for a hearing under subsection 4, the regional review board shall appoint a time for and hold the hearing and shall issue its decision within seven days after the completion of the hearing and, where the board is satisfied,

(*a*) that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or course of treatment for the providing of which authority is sought; and

(*b*) that the mental condition of the patient will not or is not likely to improve without the specific psychiatric treatment or course of treatment,

the board by order may authorize the providing of the psychiatric treatment or course of treatment specified in the application, but the board shall not authorize and no order of the board is or shall be deemed to be authority to perform psychosurgery.

Parties

(6) The attending physician and the patient or, where the patient is not mentally competent, the nearest relative or, if none, the Official Guardian and such other persons as the regional review board may specify are parties to the proceedings before the board.

ss. 32-38, re-enacted

13. Sections 32 to 38 of the said Act are repealed and the following substituted therefor:

Examination as to competency to manage estate, upon admission

32.—(1) Forthwith upon the admission of a patient to a psychiatric facility, a physician shall examine the patient to determine whether or not he is competent to manage his estate.

Idem

(2) The attending physician may examine a patient and a physician may examine an out-patient at any time to determine whether or not the patient or out-patient is competent to manage his estate.

Entry of determination and reasons in clinical record

(3) After an examination under subsection 1 or 2, the physician or attending physician, as the case may be, shall

enter his determination, together with written reasons therefor, in the clinical record prepared in respect of the patient.

Certificate of incompetence

(4) A physician or attending physician who performs an examination under subsection 1 or 2 and who is of the opinion that the patient or out-patient is not competent to manage his estate shall issue a certificate of incompetence in the prescribed form and the officer in charge shall transmit the certificate to the Public Trustee.

Idem, exceptional circumstances

(5) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the officer in charge or, where the officer in charge is not present in the psychiatric facility, the physician or attending physician shall notify the Public Trustee in the fastest manner possible that a certificate of incompetence has been issued.

Appointment by patient

(6) A patient or out-patient may appoint the Public Trustee as committee of the estate of the patient or out-patient.

Idem

(7) An appointment under subsection 6,

(*a*) is not valid unless it is signed and sealed by the patient or out-patient; and

(*b*) may be revoked by a written revocation signed and sealed by the patient or out-patient.

Where Public Trustee is committee at time of admission or receipt of patient or out-patient

(8) Where the Public Trustee is committee of the estate of a patient or out-patient at the time of his admission to or receipt in a psychiatric facility, a certificate of incompetence shall be deemed to have been issued and transmitted to the Public Trustee under subsection 4.

Where subss. 1-8 do not apply R.S.O. 1970, c. 271

(9) Subsections 1 to 8 do not apply to a patient or out-patient whose estate is under committeeship under *The Mental Incompetency Act*.

Where Public Trustee may replace committee appointed under R.S.O. 1970, c. 271

33.—(1) Notwithstanding that under *The Mental Incompetency Act* a person other than the Public Trustee has been appointed as the committee of the estate of a patient or out-patient, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

Duty of Public Trustee where committee appointed under R.S.O. 1970, c. 271

(2) If at any time a committee of the estate of a patient or out-patient is appointed under *The Mental Incompetency Act*, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed

the estate of the patient or out-patient that has come into his hands.

Consent of Public Trustee to order

(3) An order shall not be made under *The Mental Incompetency Act* for the appointment of a committee of a patient or out-patient without the consent of the Public Trustee unless seven days notice of the application has been given to him.

Acts of Public Trustee not affected

(4) The acts of the Public Trustee while committee of a patient or out-patient are not rendered invalid by the making of an order appointing another committee.

Where Public Trustee committee

34. The Public Trustee is committee of the estate of a patient or out-patient and shall assume management thereof,

(*a*) upon receipt of a certificate of incompetence;

(*b*) upon receipt of notice under subsection 5 of section 32;

(*c*) upon receipt of an appointment under subsection 6 of section 32; or

(*d*) upon receipt of a notice of continuance under section 37.

Financial statement

35. Upon the Public Trustee becoming committee of the estate of a patient or out-patient, the officer in charge shall forthwith forward a financial statement in the prescribed form to the Public Trustee.

Cancellation of certificate of incompetence

36. The attending physician may, after examining a patient or out-patient for that purpose, cancel the certificate of incompetence issued in respect of the patient or out-patient and the officer in charge shall forward a notice of cancellation in the prescribed form to the Public Trustee.

Examination as to competency before discharge

37.—(1) Where the Public Trustee is managing the estate of a patient or out-patient, the attending physician shall examine the patient or out-patient within twenty-one days before he is discharged from a psychiatric facility to determine whether or not he will be competent to manage his estate.

Notice of continuance

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the patient or out-patient will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the officer in charge shall forward the notice to the Public Trustee.

(3) The officer in charge shall transmit to the Public Trustee notice of the discharge from the psychiatric facility of a patient or an out-patient in respect of whom a certificate of incompetence is in force. Where notice of discharge to be transmitted to Public Trustee

38. The Public Trustee ceases to be committee of the estate of a patient or out-patient and shall relinquish management thereof, Where Public Trustee ceases to be committee

(*a*) upon receipt of notice of cancellation of the certificate of incompetence of the patient or out-patient;

(*b*) upon receipt of a revocation in writing, signed and sealed by the patient or out-patient, of an appointment referred to in subsection 6 of section 32;

(*c*) upon receipt of notice of discharge of the patient or out-patient, unless he has at that time received a notice of continuance; or

(*d*) upon the expiration of six months after the discharge of the patient or out-patient, where a notice of continuance was received.

14.—(1) Subsection 1 of section 39 of the said Act is repealed and the following substituted therefor: s. 39 (1), re-enacted

(1) Where a certificate of incompetence or a notice of continuance has been issued, the patient or out-patient may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether or not the patient or out-patient is competent to manage his estate. Application to review board as to competency

(2) Subsection 2 of the said section 39 is amended by striking out "twelve-month" in the second line and inserting in lieu thereof "six-month". s. 39 (2), amended

15. Sections 41, 42, 45, 46 and 48 to 51 of the said Act are repealed and the following substituted therefor: ss. 41, 42, 45, 46 and 48 to 51, re-enacted

41. Where an action or proceeding is brought or taken against a person, Service of documents

(*a*) who is a patient or out-patient; and

(*b*) for whose estate a committee has not been appointed by a court,

and the action or proceeding is in connection with the estate of the person, the writ or other document by which

the action or proceeding is commenced and any other document requiring personal service,

(*c*) shall be endorsed with the name of the psychiatric facility in or of which the person is a patient or out-patient;

(*d*) shall be served,

(i) on the Public Trustee, and

(ii) on the person, or, where the attending physician is of the opinion that personal service on the person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the officer in charge.

Rights and powers of Public Trustee as committee

42. The Public Trustee as committee of a patient or out-patient has and may exercise all the rights and powers with regard to the estate of the patient or out-patient that the patient or out-patient would have if of full age and of sound and disposing mind.

. . . . .

Recitals in documents

45. A recital in a lease, mortgage or conveyance that a person is a patient in or an out-patient of a psychiatric facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

Purposes for which powers of Public Trustee may be exercised

46. The powers conferred upon the Public Trustee as committee of the estate of a patient or out-patient may be exercised,

(*a*) until the committeeship is terminated notwithstanding that the patient or out-patient has been discharged from the psychiatric facility;

(*b*) to carry out and complete any transaction entered into by the patient or out-patient before he became a patient or out-patient in a psychiatric facility;

(*c*) to carry out and complete any transaction entered into by the committee notwithstanding that the committeeship has been terminated or that the patient or out-patient has died after the transaction was commenced.

. . . . .

When gifts, etc., deemed fraudulent

48. Where the Public Trustee is committee of the estate of a patient or out-patient, every gift, grant, alienation, conveyance or transfer that is not made for full and valuable consideration actually paid or secured or that is made at or after the time when the purchaser of transferee had notice of the mental condition of the patient or out-patient, of the fact that he was a patient or out-patient or of the committeeship shall be deemed to be fraudulent and void as against the Public Trustee.

Death of patient or out-patient

49. Upon the death of a patient or out-patient of whose estate the Public Trustee is committee and until letters probate of the will or letters of administration of the estate of the patient or out-patient are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue.

Passing of accounts

50. The Public Trustee is liable to render an account as to the manner in which he has managed the property of a patient or an out-patient in the same way and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct.

Compensation of Public Trustee

51. The Public Trustee may be allowed compensation for services rendered as committee of the estate of a patient or out-patient in an amount not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation.

s. 52 (2), re-enacted

16. Subsection 2 of section 52 of the said Act is repealed and the following substituted therefor:

Application for continuance of committeeship

(2) Where the Supreme Court is satisfied, on application by the Public Trustee with notice to the person, that a person who was discharged as a patient or out-patient subject to a notice of continuance will continue to be incompetent to manage his estate after the expiry of the notice of continuance, the court by order may extend the committeeship of the Public Trustee for such period of time, or may make such other order, as the court considers proper.

Further orders

(3) Where the Public Trustee continues to manage an estate under subsection 1 or 2, the Supreme Court, upon application, may make such further order as it considers just and, in its discretion, may order that the management of the estate by the Public Trustee be relinquished.

ss. 53-55, re-enacted

17. Sections 53 to 55 of the said Act are repealed and the following substituted therefor:

Payments out of patient's or out-patient's moneys

53. The Public Trustee, out of the moneys in his hands belonging to a person who is a patient or out-patient of whose estate the Public Trustee is committee, shall pay the proper charges for maintenance of the person as a patient in or an out-patient of the psychiatric facility and the Public Trustee may also pay such sums as he considers advisable to the patient's or out-patient's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the patient or out-patient.

Payments out of moneys in court

54. Moneys in court to the credit of a patient or out-patient of whose estate the Public Trustee is committee shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of a court or a judge for such purpose.

What Public Trustee not required to do

55. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a patient or out-patient of whose estate the Public Trustee is committee or to intervene in respect of the estate or any part thereof or to take charge of any property of the patient or out-patient.

s. 56 (1), re-enacted

18. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:

Patients or out-patients in another province with estate in Ontario

(1) Where a person who is suffering from a mental disorder is a patient in or an out-patient of a psychiatric facility in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of the person in the other province or territory to be committee of the estate in Ontario.

s. 60, re-enacted

19. Section 60 of the said Act is repealed and the following substituted therefor:

60. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than $10,000. Offence

20. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

21. The short title of this Act is *The Mental Health Amendment Act, 1978*. Short title

BILL 47

An Act to amend
The Mental Health Act

1st Reading

March 2nd, 1978

2nd Reading

April 13th, 1978

3rd Reading

June 23rd, 1978

THE HON. D. R. TIMBRELL
Minister of Health

Government
Publications

BILL 20

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Public Vehicles Act



THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Note

Self-explanatory.

BILL 20 **1978**

An Act to amend The Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Vehicles Act*, being chapter 392 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following sections: ss. 26, 27, enacted

26.—(1) The Lieutenant Governor in Council may by order from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted. Policy statements

(2) An order made under subsection 1 shall be published in *The Ontario Gazette*. Publication

27.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister. Investigation directed by Minister

(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary. Hearings by Board

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Public Vehicles Amendment Act, 1978*. Short title

An Act to amend
The Public Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

3rd Reading

The Hon. J. W. Snow
Minister of Transportation
and Communications

(*Government Bill*)

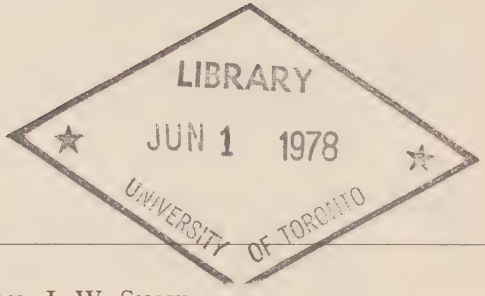
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Government Publications

BILL 20

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Public Vehicles Act



THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO
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(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary. Hearings by Board

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is *The Public Vehicles Amendment Act, 1978*. Short title

An Act to amend
The Public Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

May 16th, 1978

3rd Reading

May 16th, 1978

The Hon. J. W. Snow
Minister of Transportation
and Communications

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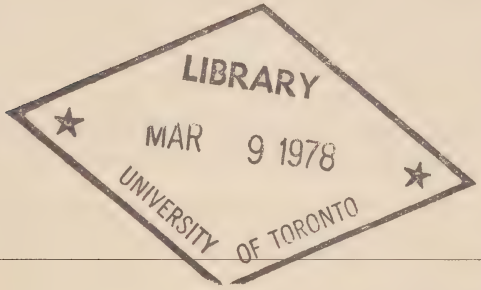
Government
Publications

BILL 21 **Government Bill**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Public Commercial Vehicles Act



THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Notes

Section 1. Section 1 (*k*) of the Act defines public commercial vehicle, basically, as a commercial vehicle licensed under the Act. The amendment goes on to include a vehicle for which a temporary exemption to licensing has been provided.

Section 2.—Subsection 1. Section 2 (1) of the Act prohibits the operation of a commercial vehicle for compensation without proper licences.

Section 2 (2) of the Act provides exceptions to the prohibition found in section 2 (1) of the Act. The list of goods that may be carried without licence is expanded.

Subsection 2. The new section 2 (3) of the Act provides a penalty different from the general penalty found in the Act where the contravention of section 2 (1) of the Act is in operating without an operating licence or in contravention of an operating licence. The fine is increased for subsequent offences by the new section 2 (3*a*) of the Act.

BILL 21 **1978**

An Act to amend The Public Commercial Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

s. 1 (*k*), amended

1. Clause *k* of section 1 of *The Public Commercial Vehicles Act*, being chapter 375 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 166, section 1, is amended by adding at the end thereof "or for which temporary exemptions have been provided under the regulations".

s. 2 (2), re-enacted

2.—(1) Subsection 2 of section 2 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 166, section 2, is repealed and the following substituted therefor:

Exceptions

(2) Subsection 1 does not apply to the transportation of,

(*a*) goods within an urban zone;

(*b*) fresh fruit or fresh vegetables;

(*c*) logs, timber, rough or dressed lumber, wooden ties and poles, plywood, particle board, waferboard, fibreboard, veneer, bark, woodchips, shavings, sawdust or wood flour;

(*d*) farm or forest produce, other than live stock or milk, that are the produce of the farm or forest from which they are being transported;

(*e*) ready mixed concrete;

(*f*) waste, including ashes, garbage, refuse, domestic waste, industrial waste and municipal refuse;

(*g*) hay, straw, live stock feed, grain, seed, turf, sod, farm produce containers, fertilizer, manure, pesticides, agricultural limestone or fencing materials;

(*h*) blocks made of clay, concrete or cinder, bricks, cement, masonry cement or lime; or

(*i*) tile or pipe having a diameter of not less than four inches inside diameter, other than tile or pipe made of steel, cast iron or aluminium.

s. 2, amended

(2) The said section 2, as amended by the Statutes of Ontario, 1971, chapter 50, section 71 and 1973, chapter 166, section 2, is further amended by adding thereto the following subsections:

Penalty

(3) Every person to whom subsection 1 applies who operates a commercial vehicle on a highway for the transportation for compensation of goods of another person without an operating licence or in contravention of the terms and conditions of his operating licence is guilty of an offence and on summary conviction is liable,

(*a*) for a first offence, to a fine of not less than $250 and not more than $5,000; and

(*b*) for each subsequent offence, to a fine of not less than $500 and not more than $5,000.

Subsequent offences

(3*a*) Where a person who has previously been convicted of an offence mentioned in subsection 3 is convicted of the same or any other offence mentioned in subsection 3 within five years after the date of the previous conviction, the offence for which he is last convicted shall be deemed to be a subsequent offence for the purpose of clause *b* of subsection 3.

s. 5 (1), re-enacted

3.—(1) Subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 1, is repealed and the following substituted therefor:

Operating licence, issue

(1) The Minister may issue an operating licence,

(*a*) in accordance with a certificate of public necessity and convenience issued by the Board under section 6; or

(*b*) where no such certificate has been issued, for the transportation of goods, other than the transportation referred to in subsection 3 of section 6, within a regional municipality.

s. 5, amended

(2) The said section 5, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by

SECTION 3.—Subsection 1. Section 5 (1) of the Act presently provides that the Minister may issue an operating licence in accordance with a certificate of public necessity and convenience issued by the Board.

The provision as amended provides that the Minister in certain circumstances may issue an operating licence without a certificate by the Board being issued. The circumstances are set out in the new section 5 (1) (*b*) of the Act.

Subsection 2. Self-explanatory.

SECTION 4.—Subsection 1. The amendment is complementary to the amendment made by section 3 (1) of the Bill and recognizes the exception made by the new section 5 (1) (*b*) of the Act.

Subsection 2. The amendment is complementary to section 4 (3) of the Bill.

Subsection 3. The new subsections being added to section 6 of the Act provide for the issuance of a probationary operating licence to persons who have been operating without a licence between September 30, 1974 and October 1, 1976 and are also so operating at the time the application is made.

This privilege would be available to those who apply within 120 days after these provisions come into force.

The probationary licence would be valid for one year after which time the Board would review the matter and either revoke the certificate or issue a new certificate approving a regular operating licence.

1975 (2nd Session), chapter 7, section 1, is further amended by adding thereto the following subsection:

Condition deleted

(4) Every operating licence issued by the Minister under this section and every certificate issued by the Board under section 6 which contains a condition having the effect of restricting or prohibiting the transportation of goods to or from any point north of North Bay, including any point north of North Bay on King's Highway No. 11 and all highways connecting with King's Highway No. 11 north of its intersection with King's Highway No. 17 near North Bay, is hereby amended by the deletion of the condition.

4.—(1) Subsection 1 of section 6 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1975 (2nd Session), chapter 7, section 2, is repealed and the following substituted therefor: s. 6 (1), re-enacted

Approval of Board

(1) Except for a licence issued pursuant to clause *b* of subsection 1 of section 5, the Minister shall not issue an operating licence to any person unless the Board, upon the application of that person in the prescribed form has, after a hearing of the application as required by *The Ontario Highway Transport Board Act*, R.S.O. 1970, c. 316 approved the issue of the licence to him on the ground that public necessity and convenience warrant the issue of the licence and will be served thereby, and has issued a certificate to that effect to the Minister.

(2) Subsection 2 of the said section 6, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 2, is further amended by striking out "subsection 3" in the amendment of 1975 (2nd Session) and inserting in lieu thereof "subsections 3 and 11". s. 6 (2), amended

(3) The said section 6, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 2 and 1976, chapter 22, section 1, is further amended by adding thereto the following subsections: s. 6, amended

Applicants who operated between September 30, 1974 and October 1, 1976

(9) An application for a probationary operating licence or licences may be made to the Board by a person who has not been the holder of an operating licence at any time between the 30th day of September, 1974 and the 1st day of October, 1976.

Evidence in support of application

(10) In support of an application made pursuant to subsection 9, the person making the application shall submit to the Board evidence showing,

(*a*) that, from the 1st day of October, 1974 to the 30th day of September, 1976, the applicant operated on a continuing basis one or more commercial vehicles transporting goods for compensation where the operation was not restricted to urban zones;

(*b*) the number of commercial vehicles operated by the applicant;

(*c*) a description of goods carried and names of the consignors of the goods;

(*d*) the points of origin and destination of the goods described pursuant to clause *c*;

(*e*) that persons named in clause *c* support the application;

(*f*) that the applicant is financially capable of continuing to provide such transportation services in accordance with this Act and the regulations and of meeting his financial responsibilities to the persons referred to in clause *e*; and

(*g*) that the applicant was on the date of the application carrying on the business of transporting for compensation goods of another person where the operation was not restricted to urban zones.

Issuance of certificate

(11) The Board, upon hearing an application made pursuant to subsection 9 and being satisfied with regard only to the evidence submitted pursuant to subsection 10, shall issue a certificate or certificates consistent with such evidence approving the issue of a probationary licence or licences, which certificate or certificates shall state the maximum number of commercial vehicles which may be operated.

Issuance of licence

(12) Notwithstanding subsection 1 and subject to subsection 15, where the Board has issued a certificate or certificates under subsection 11, the Minister shall issue a probationary licence or licences in accordance with the certificate or certificates containing such terms and conditions as set out in the certificate or certificates.

Time limit for application under subs. 9

(13) An application pursuant to subsection 9 shall be made no later than 120 days after that subsection comes into force.

Applicant to file tariff

(14) An applicant under subsection 9 shall file with his application a tariff of tolls showing all the rates and charges

SECTION 5. Section 7 (1) of the Act provides that an operating licence shall not be transferred without the approval of the Minister. The new sections 7 (1*a*) and 7 (1*b*) of the Act provide that an operating licence issued pursuant to an application under the new section 5 (1) (*b*) or 6 (9) of the Act cannot be transferred.

for the transportation of goods in respect of which the transportation is proposed to be provided or offered by the applicant.

Requirements prior to issue of licence

(15) Before a licence is issued by the Minister pursuant to a certificate issued by the Board pursuant to subsection 11, the applicant shall file with the Ministry for each motor vehicle that he proposes to operate under the licence, a safety standards certificate issued under *The Highway Traffic Act* not more than thirty days before the date of filing.

R.S.O. 1970, c. 202

Validity of probationary operating licence

(16) A probationary operating licence issued under subsection 12 expires,

(*a*) upon the Board revoking its certificate pursuant to subsection 17; or

(*b*) where the Board issues a new certificate under subsection 17,

(i) upon the Minister issuing an operating licence under subsection 1 pursuant to the certificate, or

(ii) upon the expiration of three months after the issuance of the new certificate,

whichever first occurs.

Review by Board

(17) The Board shall, not less than one year after the date of issue of a probationary operating licence issued under subsection 12 and as soon after the expiration of the one year as is convenient to the Board, review pursuant to section 17 of *The Ontario Highway Transport Board Act* the certificate with respect to the licence and shall revoke the certificate or issue a new certificate approving the issue of an operating licence.

R.S.O. 1970, c. 316

5.—(1) Section 7 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by adding thereto the following subsection:

s. 7, amended

Exception to subs. 1

(1*a*) Notwithstanding subsection 1, no probationary operating licence issued pursuant to an application under subsection 9 of section 6 is transferable.

(2) The said section 7 is further amended by adding thereto the following subsection:

s. 7, amended

Exception to subs. 1

(1*b*) Notwithstanding subsection 1, no operating licence issued pursuant to clause *b* of subsection 1 of section 5 is transferable.

s. 8, amended

6. Section 8 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "licence" in the second line "other than a licence issued pursuant to clause *b* of subsection 1 of section 5".

s. 10, amended

7.—(1) Section 10 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by striking out "suspend or cancel" in the first and second lines and inserting in lieu thereof "suspend, cancel or refuse to issue".

s. 10, amended

(2) The said section 10 is further amended by adding thereto the following clause:

(*ba*) where the past conduct of the applicant or licensee or, where the applicant or licensee is a corporation, of its officers or directors affords reasonable grounds for belief that the transportation service will not be operated in accordance with the law and with honesty and integrity.

s. 12 (1), re-enacted

8.—(1) Subsection 1 of section 12 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1973, chapter 166, section 5, is repealed and the following substituted therefor:

Issue to holder of operating licence

(1) Subject to subsections 2 and 3 and to section 12*c*, the holder of an operating licence is entitled, upon application to the Minister in the prescribed form and payment of the prescribed fee, to be issued by the Minister vehicle licences for commercial vehicles for operation pursuant to his operating licence.

s. 12, amended

(2) The said section 12 is further amended by adding thereto the following subsections:

Limit on licences issued

(3) No vehicle licence shall be issued for any one commercial vehicle pursuant to an operating licence issued under clause *b* of subsection 1 of section 5 while another such licence in respect of the same vehicle is in force.

Idem

(4) No person shall hold more than one of the following with respect to a specific commercial vehicle:

1. A vehicle licence issued pursuant to an operating licence issued under clause *b* of subsection 1 of section 5.

SECTION 6. Section 8 of the Act provides that the Minister may refer operating licences to the Board. The amendment excludes those operating licences for which a certificate of the Board was not originally required. This is complementary to the new section 5 (1) (*b*) of the Act.

SECTION 7. Section 10 of the Act empowers the Minister to suspend or cancel an operating licence for any of the causes set out in that section.

The amendment adds the power to refuse to issue a licence in circumstances where the Minister could have suspended or cancelled a licence.

There is also added a further cause for suspending, cancelling or refusing to issue a licence.

SECTION 8. Section 12 (1) of the Act entitles the holder of an operating licence to be issued a vehicle licence for commercial vehicles for operation pursuant to his operating licence. The amendment to section 12 (1) as recast simply adds the reference to subsection 3 to those references already made.

The subsections added provide that only one vehicle licence in respect of any one vehicle can be in force pursuant to an operating licence issued without a certificate of the Board being required.

This limitation would apply whether the operating licence is issued by the Minister under section 5 (1) (*b*) of the Act or by a regional municipality.

SECTION 9. The amendment has the effect of preventing the transfer of a vehicle licence which has been obtained pursuant to an operating licence issued without a certificate of the Board being obtained.

SECTION 10. The amendment is complementary to section 7 (1) of the Bill.

SECTION 11. The reference to Schedules A and B is being deleted. This is complementary to section 15 of the Bill.

Added to the matters which are to be part of a bill of lading is a statement by the carrier or freight forwarder as to the state of the goods when he received them.

Where a driver or carrier is required to produce a copy of a bill of lading, a memorandum of the bill will no longer suffice, but a "carrier's waybill" may be produced instead.

Where a shipment is carried by more than one vehicle, the carrier must ensure that a bill of lading or a waybill is in each vehicle.

2. A licence for the commercial vehicle issued pursuant to a by-law passed by the council of a regional municipality where the operation of commercial vehicles solely within that regional municipality has been exempted from the provisions of this Act or the regulations by a regulation made under clause v of section 18.

9. Subsection 3 of section 12*a* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "licence" in the first line "other than a vehicle licence issued pursuant to an operating licence issued under clause *b* of subsection 1 of section 5". s. 12*a* (3), amended

10. Clause *a* of subsection 1 of section 12*i* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is repealed and the following substituted therefor: s. 12*i* (1) (*a*), re-enacted

(*a*) to suspend, cancel or refuse to issue an operating licence under section 10.

11. Subsections 2 to 6 of section 12*n* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed and the following substituted therefor: s. 12*n* (2-6), re-enacted

(2) A bill of lading shall contain such information as may be prescribed by regulation together with an acknowledgement of receipt by the carrier or the freight forwarder of the goods therein described indicating whether the goods were received in apparent good order and condition and an undertaking to carry the goods for delivery to the consignee or the person entitled to receive the goods and shall be signed in full by, or on behalf of, the issuing carrier or issuing freight forwarder and by the consignor as accepting the terms and conditions contained, or deemed to be contained, therein. Contents

(3) A signed copy of the bill of lading shall be retained by the consignor and by the carrier. Signed copy to be retained

(4) Every driver operating a public commercial vehicle shall carry on each trip a copy of the bill of lading and shall produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry. Copy of bill of lading to be carried by driver

(5) Where a carrier is transporting goods on behalf of a freight forwarder, the driver transporting the goods by public commercial vehicle shall carry on each trip a copy of the bill of lading issued by the freight forwarder and shall Idem

produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's waybill carried in lieu of bill of lading

(6) Notwithstanding subsections 4 and 5, a carrier's waybill, containing such information as may be prescribed by regulation, may be carried by any driver operating a public commercial vehicle or transporting goods on behalf of a freight forwarder and may be produced in lieu of a bill of lading when such is required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's responsibility

(7) Where any shipment of goods is carried on more than one vehicle, the carrier shall ensure that every part of the shipment is accompanied by a copy of the bill of lading or by a waybill referred to in subsection 6.

s. 16, re-enacted

12. Section 16 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 166, section 12, is repealed and the following substituted therefor:

Penalty

16. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on summary conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not less than $150 and not more than $1,500.

s. 18, amended

13.—(1) Section 18 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 50, section 71, 1973, chapter 166, section 13 and 1975 (2nd Session), chapter 7, section 3, is further amended by adding thereto the following clause:

(*j*) prescribing the form and contents of a waybill.

s. 18, amended

(2) The said section 18 is further amended by adding thereto the following clauses:

(*t*) governing the issue and renewal of operating licences and classes of operating licences;

(*u*) prescribing the qualifications of applicants for and holders of operating licences or any class or classes of operating licences;

(*v*) exempting from the provisions of this Act or the regulations commercial vehicles or classes thereof operated solely within specified regional municipalities;

SECTION 12. The minimum and maximum general penalties are increased from $50 and $1,000, respectively, to $150 and $1,500.

SECTION 13.—Subsection 1. Section 18 of the Act refers to the authority to make regulations. The added clause is complementary to sections 11 and 15 of the Bill and is self-explanatory.

Subsection 2. Self-explanatory.

SECTION 14. Self-explanatory.

SECTION 15. Schedules A and B set out conditions deemed to be part of contracts for transportation of goods for compensation.

(*w*) exempting holders of any class or classes of operating licences from any of the provisions of section 12*j* or 12*n*.

14. The said Act is amended by adding thereto the following sections: ss. 19, 20, enacted

19.—(1) The Lieutenant Governor in Council may by order from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted. Policy statements

(2) An order made under subsection 1 shall be published in *The Ontario Gazette*. Publication

20.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister. Investigation directed by Minister

(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary. Hearings by Board

15. Schedules A and B to the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed. Schedules A and B, repealed

16.—(1) This Act, except subsection 1 of section 3, sections 4, 5 and 6, subsection 1 of section 7 and sections 8, 9, 10, 11, 13 and 15, comes into force on the day it receives Royal Assent. Commencement

(2) Subsection 1 of section 3, sections 4, 5 and 6, subsection 1 of section 7 and sections 8, 9, 10, 11, 13 and 15 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

17. The short title of this Act is *The Public Commercial Vehicles Amendment Act, 1978*. Short title

An Act to amend
The Public Commercial
Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(*Government Bill*)

1978

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Government Publications

BILL 22

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislative Assembly

An Act to amend The Highway Traffic Act



THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Notes

Section 1. The provision allows a new resident in Ontario thirty days to obtain a motor vehicle permit and licence plates.

Section 2. Self-explanatory.

Section 3. The provision provides for a probation period for drivers to be regulated by the Lieutenant Governor in Council.

BILL 22 **1978**

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection: s. 12, amended

(1*a*) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law. Exemption from ss. 6, 8 for thirty days

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection: s. 13, amended

(4*a*) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry. Applicant for driver's licence may be photographed

3. The said Act is amended by adding thereto the following section: s. 33*a*, enacted

33*a*. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers, Probationary drivers

(*a*) defining probationary drivers;

(*b*) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;

(*c*) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;

(*d*) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;

(*e*) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1), re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence respecting dealing in motor vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3), re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than $10 and not more than $500.

s. 35 (4), amended

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is amended by striking out "required to be licensed" in the fifth line.

s. 35 (6), re-enacted

(4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Suspension or cancellation of licence by Minister

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or

SECTION 4. Section 35 of the Act requires a licence to operate a business involving the storing of, dealing in or wrecking of motor vehicles, which business may include a garage business and a used car lot.

The amendments remove the reference to a "garage business" where it would not otherwise come within section 35 (1) of the Act and removes the reference to storing motor vehicles.

Section 35 (4) of the Act allows a constable to enter licensed premises for purposes of investigation and inspection. The amendment will allow him to enter a garage, which now will not require a licence for purposes of investigation and inspection.

SECTION 5. Section 37 (12) of the Act permits certain vehicles referred to therein to carry a red light. The provision as recast adds to this list Ministry vehicles used by officers appointed to carry out the provisions of certain specified Acts. The recast provision also serves to clarify when vehicles may carry a red light.

SECTION 6. Section 65 (1) of the Act limits the width of vehicles on a highway. The amended subsections clarify that the width of the vehicle includes the width of the vehicle and load.

for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient.

(5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7), re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12), re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light in front; R.S.O. 1970, cc. 392, 375

6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

(2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

7.—(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

(2) Section 3 comes into force on the 1st day of January, 1979. Idem

Idem

(3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.

Short title

8. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(*Government Bill*)

1978

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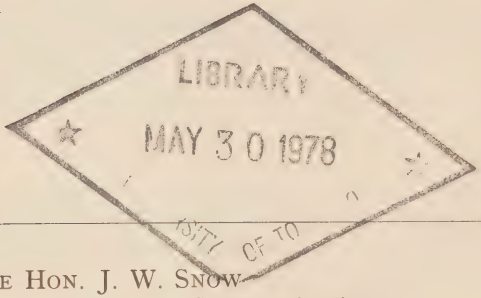
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BILL 22

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act



THE HON. J. W. SNOW
Minister of Transportation and Communications

(Reprinted as amended by the Committee of the Whole House)

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

Explanatory Notes

Section 1. The provision allows a new resident in Ontario thirty days to obtain a motor vehicle permit and licence plates.

Section 2. Self-explanatory.

Section 3. The provision provides for a probation period for drivers to be regulated by the Lieutenant Governor in Council.

BILL 22 **1978**

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection: s. 12, amended

(1*a*) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law. Exemption from ss. 6, 8 for thirty days

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection: s. 13, amended

(4*a*) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry. Applicant for driver's licence may be photographed

3. The said Act is amended by adding thereto the following section: s. 33*a*, enacted

33*a*. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers, Probationary drivers

(*a*) defining probationary drivers;

(*b*) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;

(*c*) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;

(*d*) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;

(*e*) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1), re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence respecting dealing in motor vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3), re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than $10 and not more than $500.

s. 35 (4), re-enacted

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Right of entry and inspection

(4) Any constable or any officer appointed for carrying out the provisions of this Part may enter into any place where motor vehicles or bicycles are stored or dealt in, or into any garage, repair shop, used car lot or premises used for the wrecking or dismantling of vehicles, and make such investigation and inspection as he thinks proper for the purposes of this Part.

SECTION 4. Section 35 of the Act requires a licence to operate a business involving the storing of, dealing in or wrecking of motor vehicles, which business may include a garage business and a used car lot.

The amendments remove the reference to a "garage business" where it would not otherwise come within section 35 (1) of the Act and removes the reference to storing motor vehicles.

Section 35 (4) of the Act allows a constable to enter licensed premises for purposes of investigation and inspection. The provision as re-enacted will allow him to enter a garage, which now will not require a licence for purposes of investigation and inspection; it will further allow him to enter a repair shop.

SECTION 5. Section 37 (12) of the Act permits certain vehicles referred to therein to carry a red light. The provision as recast adds to this list Ministry vehicles used by officers appointed to carry out the provisions of certain specified Acts. The recast provision also serves to clarify when vehicles may carry a red light.

SECTION 6. Section 65 (1) of the Act limits the width of vehicles on a highway. The amended subsections clarify that the width of the vehicle includes the width of the vehicle and load.

(4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (6), re-enacted

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient. Suspension or cancellation of licence by Minister

(5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7), re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a garage, repair shop or used car lot, or the wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12), re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light in front; R.S.O. 1970, cc. 392, 375

6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

(2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

Commencement

7.—(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 3 comes into force on the 1st day of January, 1979.

Idem

(3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.

Short title

8. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

May 16th, 1978

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

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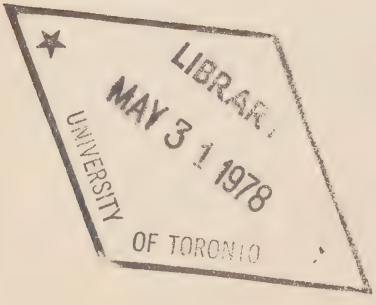
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An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications



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BILL 22 **1978**

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection: s. 12, amended

(1*a*) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law. Exemption from ss. 6, 8 for thirty days

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection: s. 13, amended

(4*a*) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry. Applicant for driver's licence may be photographed

3. The said Act is amended by adding thereto the following section: s. 33*a*, enacted

33*a*. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers, Probationary drivers

(*a*) defining probationary drivers;

(*b*) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;

(*c*) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;

(*d*) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;

(*e*) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1), re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence respecting dealing in motor vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3), re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than $10 and not more than $500.

s. 35 (4), re-enacted

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Right of entry and inspection

(4) Any constable or any officer appointed for carrying out the provisions of this Part may enter into any place where motor vehicles or bicycles are stored or dealt in, or into any garage, repair shop, used car lot or premises used for the wrecking or dismantling of vehicles, and make such investigation and inspection as he thinks proper for the purposes of this Part.

(4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (6), re-enacted

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient. Suspension or cancellation of licence by Minister

(5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7), re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a garage, repair shop or used car lot, or the wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12), re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light in front R.S.O. 1970, cc. 392, 375

6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

(2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1), amended

Commencement

7.—(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 3 comes into force on the 1st day of January, 1979.

Idem

(3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.

Short title

8. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

May 16th, 1978

3rd Reading

May 16th, 1978

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